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THE

ROMAN ASSEMBLIES

FROM THEIR ORIGIN TO THE END OF THE REPUBLIC

WITHDRAWN

BY

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"AN ANCIENT HISTORY," ETC.

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To
MY WIFE

Οὐ μὲν γὰρ τοῦ γε κρεῖσσον καὶ ἄρειον,
Ἢ ὅθ' ὁμοφρονέοντε νοήμασιν οἶκον ἔχητον
Ἀνὴρ ἠδὲ γυνή· πόλλ' ἄλγεα δυσμενέεσσι,
Χάρματα δ' εὐμενέτησι· μάλιστα δὲ τ' ἔκλυον αὐτοί.

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PREFACE

This volume is the first to offer in monographic form a detailed treatment of the popular assemblies of ancient Rome. Necessarily much of the material in it may be found in earlier works; but recent progress in the field, involving a reaction against certain theories of Niebuhr and Mommsen affecting the comitia, justifies a systematic presentation of existing knowledge of the subject. This task has required patient labor extending through many years. The known sources and practically all the modern authorities have been utilized. A determination to keep free from conventional ideas, so as to look at the sources freshly and with open mind, has brought views of the assemblies not found in other books. The reader is earnestly requested not to reject an interpretation because it seems new but to examine carefully the grounds on which it is given. In general the aim has been to follow a conservative historical method as opposed to the radical juristic, to build up generalizations on facts rather than to estimate sources by the criterion of a preconceived theory. The primary object of the volume, however, is not to defend a point of view but to serve as a book of study and reference for those who are interested in the history, law, and constitution of ancient Rome and in comparative institutional research.

In the preparation of the volume, I have been generously aided by my colleagues in Columbia University. To Professor William M. Sloane, Head of the Department of History, I owe a great debt of gratitude for kindly sympathy and encouragement in the work. It is an especial good fortune that the proofs have been read by Professor James C. Egbert. Many improvements are due to his scholarship and editorial experience. Professor George N. Olcott has advised me on various numismatic matters, and I am indebted to Dr. John L. Gerig

for information on two or three etymologies. The proofs have also been read and corrections made by Dr. Richard R. Blews of Cornell University. It is a pleasure to remember gratefully these able friends who have helped me with their special knowledge, and to add the name of Mr. Frederic W. Erb of the Columbia University Library, whose courtesy has facilitated the borrowing of books for the study from other institutions.

Notwithstanding every effort to make the work accurate, mistakes and inconsistencies will doubtless be found in it, and I shall thankfully welcome suggestions from any reader for its further correction and improvement.

GEORGE WILLIS BOTSFORD.

MOUNT VERNON, NEW YORK,
June 7, 1909.

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THE ROMAN ASSEMBLIES

THE ROMAN ASSEMBLIES

PART I

ELEMENTS OF THE COMITIAL CONSTITUTION

CHAPTER I

THE POPULUS AND ITS EARLIEST POLITICAL DIVISIONS

I. *The Populus*

THE derivation of populus, "people," "folk," is unknown. Attempts have been made to connect it with populari, "to devastate," so as to give it primarily a military signification — perhaps simply "the army."[1] In the opinion of others it is akin to plēnus, plēbes, πλῆθος, πολύς, πίμπλημι,[2] in which case it would signify "multitude," "mass," with the idea of collective strength, which might readily pass into "army" as a secondary meaning.[3] Fundamentally personal, it included all those individuals, not only the grown men but their families as well, who collectively made up the state, whether Roman or foreign, monarchical or republican.[4] Only in a transferred sense did it apply to territory.[5] The ancient definition, "an association based on the common acceptance of the same body of laws and

[1] Cf. Mommsen, *Röm. Forsch.* i. 168 and n. 1. Schrader, *Reallex.* 920 f., accepts this explanation as most probable, and connecting it with Skt. cakrá-, interprets it as referring to a wheel formation of the army. But Vaniček, *Griech.-lat. etym. Wörterb.* 1085 f., connects populari with spol-iu-m.

[2] Curtius, *Griech. Etym.* 260, English, 344; Corssen, *Ausspr.* i. 368, 422; Vaniček, *Etym. Wörterb. d. lat. Spr.* 90; *Griech.-lat. etym. Wörterb.* 506; Walde, *Lat. etym. Wörterb.* 480 f.; cf. Schrader, ibid.; Genz, *Patr. Rom*, 51 f.

[3] This interpretation would explain magister populi and populari. Plebs, on the other hand, denoted the multitude as distinguished from the leaders; hence it differed from populus, notwithstanding Herzog, *Röm. Staatsverf.* i. 98, n. 2.

[4] Cf. Mommsen, *Röm. Staatsr.* iii. 3. [5] Livy xxi. 34. 1.

on the general participation in public benefits,"[1] is doubtless too abstract for the beginnings of Rome. Citizenship — membership in the populus — with all that it involved is elaborately defined by the Roman jurists;[2] but for the earlier period it will serve the purpose of the present study to mention that the three characteristic public functions of the citizen were military service, participation in worship, and attendance at the assembly.[3] In a narrower sense populus signifies "the people," "masses," in contrast with the magistrates or with the senate, as in the well known phrase, senatus populusque Romanus.

II. *The Three Primitive Tribes*

The Romans believed that the three tribes which composed the primitive populus were created by one act in close relation with the founding of the city.[4] For some unknown reason they were led to connect the myth of Titus Tatius, the eponymous hero of the Tities,[5] with the Quirinal,[6] and with the Sabines,[7] who were generally supposed to have occupied that

[1] Cic. *Rep.* i. 25. 39; Livy i. 8. 1; Isid. *Etym.* ix. 6. 5.

[2] Cf. Madvig, *Röm. Staat.* i. 34 ff.; Schiller, *Röm. Alt.* 612 ff.

[3] "Arma sumere, sacris adesse, concilium inire"; Tac. *Germ.* 6. 6; 13. 1. On the Indo-European relation of the army to the folk, see Schrader, *Reallex.* 349 f. For Rome, Mommsen, *Röm. Staatsr.* iii. 3 f.

[4] Cic. *Rep.* ii. 8. 14; Dion. Hal. ii. 7. 2; Plut. *Rom.* 14, 20; Ovid, *Fast.* iii. 131; Dio Cass. Frag. 5. 8; Varro, *L. L.* v. 55; Colum. v. 1. 9.

[5] As Romulus was the eponymous hero of the Ramnes (or of all the Romans?) and Lucerus (Fest. ep. 119) of the Luceres.

[6] The original seat of the hero at Rome was on the Capitoline near the site of the later temple of Juno Moneta; Plut. *Rom.* 20. It was closely connected, therefore, with the auguraculum on the spot; Varro, *L. L.* v. 47; Cic. *Off.* iii. 16. 66; Fest. ep. 16. Perhaps his name has some etymological relation with titiare, "to chirp as a sparrow"; Varro, *L. L.* v. 85 (titiis avibus); Pais, *Storia di Roma*, I. i. 277 and n. 3; Forcellini, *Lex.* s. v. The Sodales Titii, who attended to his worship (cf. Dion. Hal. ii. 52. 5; Tac. *Ann.* i. 54; *Hist.* ii. 95) were accustomed to take a certain kind of auspices from birds; Varro, ibid. His tomb was in a place called Lauretum on the Aventine (Pais, ibid. 279), confused probably with Laurentum, where he is said to have been killed. All these circumstances indicate that Titus Tatius was an indigenous Roman, or at most a Latin hero, and that his connection with the Sabines is an ill-founded, relatively late idea. The primary origin of the word Titienses is Etruscan; Schulze, *Lat. Eigennam.* 218.

[7] Possibly because the rites of the Titian sodales seemed to be Sabine (cf. Tac. *Ann.* i. 54); but even if they were, this circumstance would not make the Titian tribe Sabine.

hill.[1] Consequently some of their historians felt compelled to defer their account of the institution of the tribes till they had told of the union of the Sabines with the Romans, which at the same time gave them an opportunity to derive the names of the curiae from those of the Sabine women. Varro,[2] however, who protests against this derivation, refers the organization of the people in the three tribes to an earlier date, connecting it immediately with the founding of Rome. Though he affirmed that one tribe was named after Romulus, another after Titus Tatius, and the third, less positively, after an Etruscan Lucumo, Caeles Vibenna, who came to the aid of Romulus against Titus Tatius,[3] neither he nor any other ancient writer identified the Tities with the Sabines, whose quarter in the city was really unknown,[4] or the Luceres with an Etruscan settlement under Caeles whether in the Vicus Tuscus[5] or on the Caelian hill.[6] Since the Romans knew the tribe in no other relation than as a part of the state, they could not have thought of their city as consisting originally of a single tribe, to which a second and afterward a third were added, or that any one of these three tribes had ever been an independent community. These views are modern;[7] there is no trace of them in the ancient writers.[8]

[1] Varro, however, placed them on the Aventine. A Sabine settlement on the Quirinal has not been proved; cf. Lécrivain, in Daremberg et Saglio, *Dict.* ii. 1514.

[2] In Dion. Hal. ii. 47. 4; cf. 7. 2; Plut. *Rom.* 13.

[3] *L. L.* v. 46, 55; Serv. *in Aen.* v. 560.

[4] P. 2, n. 6, and n. 1 above.

[5] Serv. ibid.

[6] Cf. Hülsen, in Pauly-Wissowa, *Real-Encycl.* iii. 1273.

[7] Proposed by Niebuhr, *Röm. Gesch.* i. 311 ff., English, i. 153 ff. In his opinion the three tribes were of different nationalities. His view, with or without the theory of national syncretism, has been accepted by many scholars, including Schwegler, *Röm. Gesch.* i. 480 ff., 497–514; Lange, *Röm. Alt.* i. 82 ff.; Peter, *Gesch. Roms*, i. 60; Madvig, *Röm. Staat.* i. 97 f.; Herzog, *Röm. Staatsverf.* i. 23 f. (with some reserve); Schiller, *Röm. Alt.* 621; Ihering, *Geist des röm. Rechts*, i. 309, 313; Genz, *Patr. Rom*, 89 ff.; Bernhöft, *Röm. Königsz.* 79; Puchta, *Curs. d. Inst.* i. 73; Soltau, *Röm. Volksversamml.* 46 f.; Kubitschek, *Rom. trib. or.* 4; Mommsen, *Röm. Staatsr.* iii. 96 f.; Willems, *Sén. Rom.* i. 7; Schrader, *Reallex.* 801; Nissen, *Templum*, 145 f.; *Ital. Landesk.* ii. 496.

[8] Against the view that the three tribes were once independent communities are Volquardsen, in *Rhein. Mus.* xxxiii. 542 ff.; Meyer, *Gesch. d. Alt.* ii. 510; Lécrivain, in Daremberg et Saglio, *Dict.* ii. 1514 a; Holzapfel, in *Beitr. z. alt. Gesch.* i. 241, 249 ff.; Platner, *Top. and Mon. of Anc. Rome*, 33. Ihne, *Hist. of Rome*, i. 114, thinks they probably had reference only to the army. The double nature of many

Even if it could be proved that they took this point of view, the question at issue would not thereby be settled; for no genuine tradition regarding the origin of the primitive tribes came down to the earliest annalists; the only possible knowledge they possessed on this point was deduced from the names of the tribes and from surviving institutions presumably connected with them in the period of their existence.[1] Under these circumstances modern speculations as to their independent character and diverse nationality seem absurd. The proper method of solving the problem is to test and to supplement the scant sources by a comparative study of the institution.

The low political vitality of the three primitive Roman tribes, as of the corresponding Greek phylae,[2] when we first meet with them in history, points to the artificiality of these groups — a condition indicated further both by their number and by their occurrence in other Italian states.[3] Far from being con-

Roman institutions — a phenomenon on which scholars chiefly rely for their theory of a once existent two-tribe state — may better be explained by the union of the Sabines with the Romans after the institution of the three tribes; as this relatively later date would at the same time explain the six-fold character of various institutions. That the union took place in the beginning of the fifth century B.C. is believed by Pais, *Storia di Roma*, I. i. 277. Or the stated increase in the number of members of the vestals, augurs, pontiffs, and more particularly of senators, may be due to an ancient theory, dimly hinted at in the sources, of an admission of the second and third tribes successively to representation in these bodies; cf. Niebuhr, *Röm. Gesch.* i. 320 f., English, i. 157; Bloch, *Orig. d. sén.* 32 ff.

[1] Bormann, in *Eran. Vind.* 345–58, following a hint offered by Niese, *Röm. Gesch.* (1st ed. 1886) 585, has gone so far as to deny their existence, setting them down as an invention of Varro; but Holzapfel, in *Beitr. z. alt. Gesch.* i. 230 ff., proves that Cicero and other sources did not draw from Varro their information regarding the tribes. Against Bormann, see also Pais, ibid. I. i. 279, n. 1.

[2] That the primitive Roman tribes were in character substantially identical with the primitive Greek phylae cannot be doubted. Apparently the four Ionic phylae in Attica offered no resistance to dissolution at the hands of Cleisthenes; cf. Hdt. v. 66; Arist. *Ath. Pol.* 21. (For the best treatment of the Greek phylae, see Szanto, E., *Ausgewählte Abhandlungen*, 216–88, who maintains that the institution was artificial.) In like manner the three Roman tribes disappeared, leaving but scant traces; p. 7.

[3] Mantua, till late an Etruscan city, had three tribes; Serv. *in Aen.* x. 202. In this connection it is significant that Volnius, an Etruscan poet, declared the primitive tribal names to be Etruscan; Varro, *L. L.* v. 55. The information suggests the possibility that some Etruscan cities had these same tribes; cf. Fest. 285. 25; *CIL.* ix. 4204 (locality unknown). In fact these names can be ultimately traced to Etruscan gentilicia; Schulze, *Lat. Eigennam.* 218, 581. The triplet champions of

fined to Rome, the tripartite division of the community belonged to many Greek and to most Italian peoples,[1] and has entered largely into the organization of communities and nations the world over.[2] A derivation of tribus, Umbrian trifu, accepted by many scholars, connects it with the number three.[3] The wide use of this conventional number, and more particularly the regular recurrence of the same three Dorian tribes in many Dorian cities — as of the same four Ionic tribes in many Ionic cities[4] — and of the same three Latin (or Etruscan?) tribes in several old Latin cities, could not result from chance combi-

Alba point to a division of this community into three tribes; Niebuhr, *Röm. Gesch.* i. 386; Schwegler, *Röm. Gesch.* i. 502. The story that T. Tatius was killed at Lavinium indicates the existence of a tomb of the hero in that place — a clear sign of a tribe of Tities there; Livy i. 14. 2; Dion. Hal. ii. 52; cf. Varro, *L. L.* v. 152. A trace of Ramnes is found at Ardea; Serv. *in Aen.* ix. 358. There were Ramnennii in Ostia (*CIL.* xiv. 1542) and Ramnii in Capua; ibid. x. 3772; Schulze, *Lat. Eigennam.* 218. The existence of a tribe of Luceres in Ardea is vouched for by Lucerus, its eponymous hero, king of that city; Fest. ep. 119; Pais, *Storia di Roma*, I. i. 279. The word in various forms occurs in certain Etruscan towns; Schulze, ibid. 182. These facts make it probable that some at least of the Latin as well as Etruscan cities had the same three tribes.

[1] The Etruscans had twelve cities in each of their three districts; Strabo v. 4. 3; Livy v. 33. Each city had three consecrated gates and three temples to Jupiter, Juno, and Minerva; Serv. *in Aen.* i. 422. The Umbrians had three hundred cities in the Po valley, destroyed by the Etruscans; Pliny, *N. H.* iii. 14. 113. The Bruttians were organized in a confederation of twelve cities; Livy xxv. 1. 2. The Iapygians were divided into three branches (Polyb. iii. 88. 4), each of which comprised twelve smaller groups; Bloch, *Orig. d. sén.* 9 f.; Holzapfel, in *Beitr. z. alt. Gesch.* i. 245 ff., 252 f. The tripartite division also existed in many pagi which continued to historical time; Kornemann, in *Klio*, v. 83.

[2] These facts are too well known to need illustration; cf. Nissen, *Templum*, 144; Bloch, *Orig. d. sén.* 1 ff.

[3] Varro, *L. L.* v. 55. Tribus = tri-bu-s: bu- is related to φυ- "to grow," Skt. bhū-; tribus, corresponding to φυ-λή, would then signify "three-branch;" Corssen, *Ausspr.* i. 163; Pott, *Etym. Forsch.* i. 111, 217; ii. 441; Vaniček, *Etym. Wörterb. d. lat. Spr.* 69; *Griech.-lat. etym. Wörterb.* 636; Bloch, ibid. 9. Schlossman, in *Archiv f. lat. Lexicog.* xiv (1905). 25-40, connecting tribus with tres, interprets it not as a third but as an indefinite part, cf. entzweien with the meaning to divide in several parts. Schrader, *Reallex.* 801, is doubtful as to the etymology; cf. Walde, *Lat. etym. Wörterb.* 636. The connection of the word with tres is denied by Madvig, *Röm. Staat.* i. 96; Nissen, *Ital. Landesk.* ii. 8, n. 5. Christ, in *Sitzb. d. bayer. Akad.* 1906. 204, prefers to connect it with Celt *trebo- (Old Irish treb), "house," Goth. thaúrp, "village." Oscan trebo- also means "house."

[4] The existence of four Ionic tribes in all Ionic cities cannot be maintained; cf. Wilamowitz-Möllendorff, in *Sitzb. d. Berl. Akad.* 1906. 71.

nations in all these places, but point unmistakably to the systematic imitation of a common pattern. That pattern must be ultimately sought in the pre-urban populus, ἔθνος, folk. If we assume that before the rise of city-states the Ionian folk was organized in four tribes (phylae) and the Dorian and Latin folks in three tribes, we shall have a condition such as will satisfactorily explain the tribal organization of the city-states which grew up within the areas occupied by these three folks respectively. The thirty votes of the Latins may be best explained by assuming a division of their populus into three tribes, subdivided each into ten groups corresponding to the Roman curiae. Whereas in Umbria the decay of the pre-urban populus allowed its tribes to become independent,[1] in Latium a development in that direction was prevented by the rise of city-states, which completely overshadowed the preëxisting organization.

The Italian city-state grew not from a tribe or a combination of tribes, but from the pagus,[2] "canton," a district of the pre-urban populus with definite consecrated boundaries,[3] usually centering in an oppidum — a place of defence and refuge.[4] In the beginning the latter enjoyed no superior right over the territory in which it was situated.[5] A pagus became a populus at the point of time when it asserted its political independence of the folk. The new state organized itself in tribes and curiae after the pattern of the folk. In the main this arrangement

[1] The tribus Sapinia was the territory of the Sapinian community (Livy xxxi. 2. 6; xxxiii. 37. 1), just as the trifu Tarinate was the territory of the community (tuta, tota, Osc. touto; *Tab. Bant.* 2) Tadinum; *Tab. Iguv.* vi. b. 54; cf. iii. 24; Buck, *Grammar of Oscan and Umbrian*, 278 f., 298; Bücheler, *Umbrica*, see index, s. Tref, Trefiper; Kornemann, in *Klio*, v. 87.

[2] Christ, in *Sitzb. d. bayer. Akad.* 1906. 207.

[3] Livy i. 55. 3 f.; *CIL.* ix. 1618, 5565; Nissen, *Ital. Landesk.* ii. 8 ff.; Kornemann, in *Klio*, v. 80.

[4] Dion. Hal. iv. 15; Nissen, *Ital. Landesk.* ii. 9–15. Doubtless oppidum applied primarily to the enclosing wall, thence to the space enclosed; Caes. *B. G.* v. 21; Varro, *L. L.* v. 153. From the beginning it must have been the chief or central settlement of the pagus, though the organization was not urban but territorial-tribal; cf. Pöhlmann, *Anfänge Roms*, 40 ff.

[5] Livy ix. 41. 6; x. 18. 8; *CIL.* i. 199; Isid. *Etym.* xv. 2. 11: "Vici et castella et pagi sunt quae nulla dignitate civitatis ornantur, sed vulgari hominum conventu incoluntur et propter parvitatem sui maioribus civitatibus attribuuntur;" Fest. ep. 72; Nissen, ibid. 11.

was artificial, yet it must have taken some account of existing ties of blood.[1] At the same time the oppidum became an urbs[2] — a city, the seat of government of the new populus. Thus arose the city-state. In the case of Rome several oppida with parts of their respective pagi[3] were merged in one urbs — that known as the city of the four regions.[4] Urbs and ager excluded each other, just as the oppidani contrasted with the pagani;[5] but both were included in the populus.

Most ancient writers represent the three tribes as primarily local,[6] and the members as landowners from the founding of the city.[7] Although their view may be a mere inference from the character of the so-called Servian tribes, the continuity of name from the earlier to the later institution points to some degree of similarity between them. It can be easily understood, too, how in time the personal feature might have so overcome the local as to make the old tribes appear to be based on birth in contrast with the territorial aspect of the new.[8]

It was probably on the institution of the later tribes that the earlier were dissolved. They left their names to the three double centuries of patrician knights.[9] Their number appears also as a factor in the number of curiae, of senators, and of members of the great sacerdotal colleges. Other survivals may be found in the name "tribunus," in the tribuni militum, the tribuni

[1] Thus the three tribes of Cyrene were made up each of a nationality or group of nationalities (Hdt. iv. 161), and the ten tribes of Thurii were named after the nationalities of which they were respectively composed; Diod. xii. 11. 3.

[2] The Romans founded their colonies according to Etruscan rites, and they believed their city to have been established in the same way; Varro, *L. L.* v. 143; Cato, in Serv. *in Aen.* v. 755; Fest. 237. 18; Kornemann, in *Klio*, v. 88. The word Roma is now declared to be Etruscan; Schultze, *Lat. Eigennam.* 579 ff.; Schmidt, Karl Fr. W., in *Berl. Philol. Woch.* 1906. 1656.

[3] Richter, *Top. d. Stadt Rom*, 30 ff., still believes that the earliest settlement was on the Palatine. His view is controverted by Degering, H., in *Berl. Philol. Woch.* xxiii (1903). 1645 f., who prefers the Quirinal; cf. also Carter, J. B., in *Am. Journ. of Archaeol.* xii (1908). 172–83.

[4] Cf. Richter, ibid. 38; Meyer, E., in *Hermes*, xxx. 13.

[5] Cf. Nissen, *Ital. Landesk.* ii. 504.

[6] Cf. Varro, *L. L.* v. 55; Verrius Flaccus, in Gell. xviii. 7. 5. The idea of Isidorus, *Etym.* ix. 6. 7, is of course absurd.

[7] This subject will be considered in connection with the Servian tribes; p. 48 f.

[8] Dion. Hal. iv. 14. 2.

[9] P. 74.

celerum,[1] the ludus Troiae,[2] and less certainly in the Sodales Titii.[3]

III. *The Curiae*

The curia as well as the tribe was a common Italian institution. We know that it belonged to the Etruscans,[4] the Latins,[5] and several other peoples of Italy.[6] There were ten curiae to the tribe, making thirty in all.[7] The association was composed, not of gentes as many have imagined, but of families.[8] For the

[1] Like the Attic phylobasileis they continued through historical time to perform sacerdotal functions; Dion. Hal. ii. 64. 3; *Fast. Praen. Mar. 19*, in *CIL.* i^2. p. 234: "(Sali) faciunt in comitio saltu (adstantibus po)ntificibus et trib. celer;" Holzapfel, in *Beitr. z. alt. Gesch.* i. 242.

[2] Verg. *Aen.* v. 553 ff.; Serv. *in Aen.* v. 560; Holzapfel, ibid. 243.

[3] P. 2, n. 6.

[4] Fest. 285. 25; cf. Serv. *in Aen.* x. 202.

[5] There were curiae in Lanuvium, an old Latin town; *CIL.* xiv. 2120. Juno Curis, Cur(r)itis, Quiritis, goddess of the curiae, was worshipped in Tibur (Serv. *in Aen.* i. 17), and in Falerii (Tertul. *Apol.* 24; *CIL.* xi. 3100, 3125, 3126; cf. Holzapfel, *Beitr. z. alt. Gesch.* i. 247; Roscher, *Lex. d. griech. u. röm. Myth.* II. i. 596 f.). A connection between Cŭris and cūria is not clear; Deecke, *Falisker*, 86.

[6] Aristotle, *Politics*, 1329, b 8, considers Italus, king of the Oenotrians, to have been author of the mess-associations (συσσίτια), adding that the institution was derived from the country of the Opici and the Chaonians. With the Opici he includes Latins as well as Ausonians; Dion. Hal. i. 72. 3. On the relation of these peoples to one another, see especially Pais, *Anc. Italy*, ch. i. Greek writers identify the curia with the phratry (Dion. Hal. ii. 7. 3 f.; Dio Cass. Frag. 4. 8), the ἑταιρεία, and the syssition (Dion. Hal. ii. 23. 3; Dio Cass. ibid.). Although the institutions designated by these four names show considerable variety of form and function, they are similar in general character and may have a common origin; Meyer, *Gesch. d. Alt.* ii. 514.

The myth which names the curiae after the Sabine women suggests that some of the curial names, and perhaps the curiae themselves, might be found among the Sabines. On Rapta and Titia however see p. 11, n. 7.

[7] Dion. Hal. ii. 7. 2; Dio Cass. Frag. 5. 8; Plut. *Rom.* 20; Fest. 174. 8; ep. 49; (Aurel. Vict.) *Vir. Ill.* ii. 12; Serv. *in Aen.* viii. 638; Pomponius, in *Dig.* i. 2. 2. 2.

Soltau, *Altröm. Volksversamml.* 47 f., entertains the peculiar idea that the curiae, invented to counteract the independent tendencies of the tribes, were not divisions of the tribes, the members of each curia being drawn from all three tribes. His view is contradicted by the sources and he admits that he cannot prove it.

St. Augustine, *Enarr. in Psalm.* 121. 7 (iv. 2. 1624 ed. Migne), and still later Paulus, the epitomator of Festus, 54, suppose that there were thirty-five curiae. Notwithstanding Hoffmann, *Patr. u. pleb. Cur.* 44 ff., the opinion of these late writers doubtless arose from an identification of the curiae with the tribes; cf. Kübler, in Pauly-Wissowa, *Real-Encycl.* iv. 1818.

[8] P. 11 f.

performance of its social and religious functions it had a house of assembly, also called curia,[1] in which the members — curiales — gathered for religious festivals. The place of meeting was a part of an edifice belonging to the collective curiae. In historical time there were two such buildings — the Curiae Veteres[2] on the northeast slope of the Palatine near the Arch of Constantine, containing seven curial meeting-places, and the Novae Curiae[3] near the Compitum Fabricium, containing the others. Their deities were Juno[4] and Tellus;[5] and their chief festivals were the Fornacalia and the Fordicidia.[6] As the worship was public, the expense was paid by the state.[7] At the head of the curia stood the curio — who in historical time was merely a

[1] The word is derived from *co-viria, "a dwelling together," "an assembly," by Pott, *Etym. Forsch.* ii. 373 f. (cf. Vaniček, *Etym. Wörterb. d. lat. Spr.* 160; Walde, *Lat. etym. Wörterb.* 161), who is followed by Schwegler, *Röm. Gesch.* i. 496, n. 8, 610, n. 4; Herzog, *Röm. Staatsverf.* i. 96. Mommsen, *Röm. Staatsr.* iii. 5, 90 and notes, gives the word the meaning "an association of citizens," deriving it from quiris (cf. *Abriss*, 11), which he connects with κῦρος, κύριος, as did Lange in 1853 (*Kleine Schriften*, i. 147). Afterward — *Röm. Alt.* i. (1876) 91 — Lange expressed some doubt as to this connection. But the fact that curia applies to the house not only of the curiales, but also of the senate and of the Salii, as well as to various other buildings, seems to indicate that the meaning "house" is primary for the Latin language if not ultimately original. Corssen, who accepts this meaning, derives cu- from sku-, "to cover," "to protect" (*Aussp.* i. 353 f.; Vaniček, *Griech.-lat. etym. Wörterb.* 1116), cf. Old High Germ. hū-t, hū-s, Eng. "house." Although Mommsen, *Röm. Staatsr.* iii. 90, n. 2, protests against this explanation, it is accepted by Meyer, *Gesch. d. Alt.* ii. 511, Soltau, *Altröm. Volksversamml.* 52, and others. Far less probable is a connection with cura, curare, assumed by most ancient writers; cf. Varro, *L. L.* v. 155; vi. 46; *Vit. pop. rom.* in Non. Marc. 57; Fest. ep. 49; Pomponius, in *Dig.* i. 2. 2. 2; Dio Cass. Frag. 5. 8; Isid. *Etym.* xv. 2. 28. These sources have misled Genz, *Patr. Rom*, 32, into fruitless speculation on the functions of the curia.

[2] Tac. *Ann.* xii. 24.

[3] Fest. 174. 6; Jordan, *Top. d. Stadt Rom*, I. i. 165 f.; iii. 43 f.; Gilbert, *Gesch. u. Top. d. Stadt Rom*, i. 102 f.; 195 ff.; Richter, *Top. d. Stadt Rom*, 33, 340; Lanciani, *Ruins and Excavations of Ancient Rome*, map opp. 58; Mommsen, *Röm. Staatsr.* iii. 99.

[4] P. 8, n. 5; Dion. Hal. ii. 50. 3; Fest. 254. 25; ep. 64; cf. Roscher, *Lex.* II. i. 596.

[5] Worshipped in the Fordicidia; Ovid, *Fast.* iv. 634; Lyd. *De Mens.* iv. 49; Wissowa, *Rel. u. Kult. d. Röm.* 159.

[6] On the curial worship, see Varro, *L. L.* vi. 13; Fest. 254. 25; 317. 12; Dion. Hal. ii. 23. 1–3; 50. 3; 65. 4; Ovid, *Fast.* ii. 527 ff.; iv. 629 ff.; Plut. *Q. R.* 89; cf. Fowler, *Roman Festivals*, 71–2, 302–6. On the stultorum feriae, see Wissowa, ibid. 142; Fowler, ibid. 304 ff.

[7] Dion. Hal. ii. 23. 1; Fest. 245. 28.

priest[1] — assisted in his religious functions by his wife and children,[2] by a lictor[3] and a flamen.[4] The fact that the curio had these officials proves that he was originally a magistrate.[5] One of the curiones the people elected curio maximus to exercise general supervision over the worship and festivals of the association.[6]

Another function of the curiae was political. The grown male members, meeting in the comitium, constituted the earliest assembly organized in voting divisions — the comitia curiata — in which each curia cast a single vote.[7] Religious and political functions the curia continued to exercise far down into historical time; and for that reason they have never been doubted by the moderns. For the primitive period Dionysius[8] ascribes to them military functions as well. His idea is that the three original tribes furnished military divisions each under a tribune, and the curiae as subdivisions of the tribe furnished companies, commanded each by a curio chosen for his valor.[9] Doubtless the writer fairly describes the military system which Rome employed before the introduction of the phalanx,[10] and which cor-

[1] Varro, *L. L.* v. 83; vi. 46; Dion. Hal. 64. 1; 65. 4; Fest. ep. 49, 62; Lyd. *De Mag.* i. 9.

[2] Dion. Hal. ii. 22. 1.

[3] *CIL.* vi. 1892; xiv. 296; Gell. xv. 27. 2; cf. Cic. *Leg. Agr.* ii. 12. 31.

[4] Fest. ep. 64: "Curiales flamines curiarum sacerdotes." For the flamen of the Curia Iovis of Simitthus, see *CIL.* viii. 14683; cf. 2596 and 11008. The statement of Festus, 154. 26, that there were but fifteen flamines must be modified. But there may have been fewer than thirty curial flamines; Mommsen, *Röm. Staatsr.* i. 390. Of the two curial officials mentioned by Dionysius, ii. 21. 2, therefore, one was the curio and the other a lictor (Mommsen, ibid. 309, n. 5; Genz, *Patr. Rom*, 47) or a flamen (Holzapfel, in *Beitr. z. alt. Gesch.* i. 242).

[5] Cf. Wissowa, *Rel. u. Kult. d. Röm.* 338, n. 3, 413, n. 2.

[6] Livy iii. 7. 7; xxvii. 8. 1; Fest. ep. 126. This official was probably instituted after the curiones had become mere priests; Genz, ibid. 48.

[7] P. 157. The comitium was a place of assembly adjoining the Forum.

[8] II. 7. 2 f.; 23. 3.

[9] Soltau, *Altröm. Volksversamml.* 52, 65, following J. J. Muller, in *Philol.* xxxiv (1874). 96–136, refuses to credit a military character to the curiae because it is mentioned by no other writer and because we can find no trace of it in historical time. His reasoning is not cogent. The curia may have lost its earlier military function, as did the phratry (*Il.* ii. 362 f.).

[10] That the antiquarians had some evidence as to the military character of the curiae is suggested by Fest. ep. 54: "Centuriata comitia item curiata dicebantur, quia populus Romanus per cetenas turmas divisus erat."

responds closely with the system prevalent among the early Greeks,[1] Germans,[2] and other European peoples.[3] The military organization was everywhere a parallel of the civil. The Roman army, however, was by no means identical with the curiate assembly, for many belonged to the tribes and the curiae who for various reasons were exempt from military service.[4]

It is probable, too, that the curiae, as well as the tribes,[5] were territorial divisions. Not only have we the authority of Dionysius[6] that each curia occupied a district of the state, but also two of the seven known curial names — Foriensis and Veliensis[7] — are local. Though the two mentioned refer to places within the city, the country people were also included in the associations.[8]

Since Niebuhr the opinion has generally prevailed that the curia was composed of gentes. A passage which at first glance seems to have a bearing on the question is Dion. Hal. ii. 7. 4: "Romulus divided the curiae into decades, each commanded by a

[1] *Il.* ii. 362 f.

[2] Tac. *Germ.* 7. 3.

[3] Schrader, *Reallex.* 349 f.

[4] All adult male citizens had a right to attend this assembly, all who were physically qualified and of military age were liable to service when called to it; but probably on no occasion were those present in the assembly identical with the military levy of the year; cf. p. 203.

[5] P. 7.

[6] II. 7. 4. The curiales must have been neighbors in order to use a common drying oven; n. 8 below.

[7] Fest. 174. 12. The first is evidently named after the Forum, the second after the Velia; cf. Plut. *Rom.* 20, who states that many were named after places. Of the other five Velitia (Fest. ibid.), Titia (ibid. ep. 366), Faucia (Livy ix. 38. 15), and Acculeia (Varro, *L. L.* vi. 23) have gentile endings. We should not imagine these four to be named after gentes, which were of later origin; Botsford, in *Pol. Sci. Quart.* xxi. (1907). 685 ff. It would be safer to assume that they, like gentilicia, are derived from the names of persons real or imaginary. Rapta (Fest. 174. 12) and Titia possibly suggested to the ancients the derivation of the curial names from those of the captive Sabine women; cf. p. 8, n. 6.

[8] Dion. Hal. iv. 12. 2. This statement is confirmed by the nature of the Fornacalia, the chief festival of the curiae; it was celebrated in connection with the drying of the far in ovens; Pliny *N. H.* xviii. 2. 8; Fest. ep. 83, 93. Evidently the members of a curia were those who had a common drying oven; Wissowa, *Rel. u. Kult. d. Röm.* 142.

leader, who in the language of the country is called decurion."[1] The word decurion proves, however, that in speaking of decades Dionysius is thinking of the military divisions called decuriae, each commanded by a decurion. In historical times the troop of cavalry — turma — was divided into three decuriae of ten each, as the word itself indicates. There were accordingly three decurions to the turma, and ten turmae ordinarily went with the legion.[2] From Varro[3] we learn that the three primitive tribes furnished turmae and decuriae of cavalry, the decuriae commanded by decurions. Dionysius accordingly refers to military companies — either to the well known decuriae of cavalry or to corresponding companies of footmen which probably existed before the adoption of the phalanx.[4] Had he meant gentes, he would have used the corresponding Greek word γένη. Niebuhr[5] inferred from this passage that each curia was divided into ten gentes, making three hundred gentes for the entire state; but a careful interpretation shows that no reference to the gentes is intended. We cannot infer therefore from this citation that the curia was divided into gentes.

The other passage relative to the question is Gellius xv. 27. 4,[6] in which Laelius Felix states that the voting in the comitia curiata was by genera hominum in contrast with the census et aetas of the centuriate assembly and with the regiones et loca of the comitia tributa. Niebuhr identifies genera with gentes.[7] It is clear, however, that in this passage Laelius is not concretely defining the voting units of the various assemblies, but is stating in a general way the principles underlying their

[1] Διῄρηνται δὲ καὶ εἰς δεκάδας αἱ φράτραι, πρὸς αὐτοῦ, καὶ ἡγεμὼν ἑκάστην ἑκόσμει δεκάδα, δεκουρίων κατὰ τὴν ἐπιχώριον γλῶτταν προσαγορευόμενος.

[2] Polyb. vi. 25. 1; cf. 20. 9. [3] *L. L.* v. 91.

[4] There is no need of assuming, with Bloch, *Origines du sénat Romain*, 102–5, that the decuriae mentioned by Dionysius are "purely imaginary."

[5] *Röm. Gesch.* i. 334 f.; Eng. 163; cf. also Schwegler, *Röm. Gesch.* i. 612 f. The antiquated view is still held by Herzog, *Röm. Staatsverf.* i. 96, and by Lécrivain, in Daremberg et Saglio, *Dict.* ii. 1504. Though Ihne, *History of Rome*, i. 113, n. 3, believes that the curiae were composed of gentes, he is doubtful as to the number.

[6] "Cum ex generibus hominum suffragium feratur, curiata comitia esse; cum ex censu et aetate, centuriata; cum ex regionibus et locis, tributa."

[7] Mommsen, too, supposes that genera here means gentes but is used so as to include also the plebeian stirpes; nevertheless he knows that the voting in the curiate assembly was by heads rather than by gentes; *Röm. Staatsr.* iii. 9, n. 2; 90, n. 5.

organization into voting units. In the comitia centuriata the principle is wealth and age; census et aetas is not to be identified with centuria or with any other group of individuals in this assembly. In like manner regiones et loca expresses the principle of organization of the tribal assembly; or if used concretely, it must designate the tribes themselves, and not subdivisions of the tribes, for none existed. Correspondingly genera hominum signifies that the principle of organization of the curiate assembly is hereditary connection; but so far as the expression is applied concretely, it must denote the curiae themselves not subdivisions of these associations. The curia, a religious, social, and political group based on birth, might well be called genus hominum in contrast with the local tribe and with the century, composed artificially of men of similar wealth and age. It is well known, too, that voting within the curiae was not by gentes but by heads.[1] As no other passage from the sources, besides these two, has even the appearance of lending support to the proposition advanced by Niebuhr, and favored by others, that the curia was a group of gentes, we may conclude that this proposition is groundless. The result is that the gens had no connection with the comitial organization.

I. The Populus; the beginnings of Rome: Schwegler, A., *Römische Geschichte*, I. bk. viii; Peter, C., *Geschichte Roms*, i. 17 ff.; Niese, B., *Grundriss der röm. Geschichte*, 16 ff., 28 ff.; Jordan, H., *Topographie der Stadt Rom im Altertum*, I. i. 153 ff.; iii. 34; Gilbert, O., *Geschichte und Topographie der Stadt Rom im Altertum*, i, ii; Richter, *Topographie der Stadt Rom*, 30 ff. (see review by H. Degering, in *Berl. Philol. Woch.* 1903. 1645 f.); Platner, S. B., *Topography and Monuments of Ancient Rome*, ch. iv; Schulze, W., *Zur Geschichte lateinischer Eigennamen*, 579–82; Pais, E., *Ancient Legends of Roman History*, ch. xii; Nissen, H., *Das Templum*, ch. v; *Italische Landeskunde*, ii. 488 ff.; Kornemann, E., *Polis und Urbs*, in *Klio*, v (1905). 72–92; Carter, J. B., *Roma Quadrata and the Septimontium*, in *Am. Journ. of Archaeol.* xii (1908). 172–83; Deecke, Wm., *Die Falisker;* Montelius, *Die frühesten zeiten Roms*, in *Correspbl. d. deutsch. Gesellsch. f. Anthr. Ethn. u. Urgesch.* xxxv (1904). 122; Pöhlmann, R., *Die Anfänge Roms;* Schrader, O., *Sprachvergleichung und Urgeschichte*, bk. IV. ch. xii; *Heer, König, Sippe, Stamm* in *Reallexikon der indogermanischen Altertumskunde;* Fustel de Coulanges, *Ancient City*, bk. iii; Leist, *Graeco-italische Rechtsge-*

[1] Livy i. 43. 10: "Viritim suffragium . . . omnibus datum est" (i.e. in the curiate assembly). This statement of the lack of relation between the gens and the curia is repeated from *Pol. Sci. Quart.* xxi. 511 f.

schichte, 103 ff.; *Alt-arisches Jus Civile*, i. 319–36; Meyer, E., *Geschichte des Altertums*, ii. 510 ff.; Mommsen, *History of Rome*, bk. I. chs. iii, iv; *Röm. Staatsrecht*, iii. 3 ff., 112–22; Marquardt, J., *Röm. Staatsverwaltung*, i. 3 ff.; Lange, L., *Röm. Altertümer*, i. 55–284; *Das röm. Königtum*, in *Kleine Schriften*, i. 77–104; Herzog, E., *Geschichte und System der röm. Staatsverfassung*, i. 3–23, 969 ff.; Willems, P., *Droit public Romain*, 17 ff.; Karlowa, O., *Röm. Rechtsgeschichte*, i. 30 ff.; Greenidge, A. H. J., *Roman Public Life*, ch. i; Bernhöft, F., *Staat und Recht der röm. Königszeit*, 69 ff.; Genz, *Das patricische Röm*, 51 ff.; Morlot, E., *Les comices électoraux sous la république Romaine*, ch. i.

II. The Primitive Tribes: Niebuhr, B. G., *Röm. Geschichte*, i. 300–321; English, i. 149–58; Schwegler, ibid. I. bk. IX. ch. xiv. § 2; Niese, ibid. 30 f.; De Sanctis, G., *Storia dei Romani*, i. 249–55; Gilbert, ibid. ii. 329–79; Nissen, *Templum*, 144–6; *Ital. Landesk.* ii. 7–15, 496 ff.; Jordan, H., *Die Könige im alten Italien*, 35–7; controverted by W. Soltau, in *Woch. f. Kl. Philol.* xxv (1908). 220–3; Mommsen, *Röm. Staatsr.* iii. 95–100, 109–12; *Röm. Tribus*, 1 f.; Lange, *Röm. Alt.* i. 81–101; Herzog, ibid. i. 23 ff.; Madvig, J. N., *Röm. Staat.* i. 95–8; Mispoulet, J. B., *Les institutions politiques des Romains*, i. 3–6; Soltau, W., *Altröm. Volksversammlungen*, 46–51; Willems, P., *Le sénat de la république Romaine*, I. ch. i; Bloch, G., *Les origines du sénat Romain*, 1–16, 32–8; Bernhöft, ibid. 79 ff.; Genz, ibid. 89–106; Meyer, ibid.; *Der Ursprung des Tribunats und die Gemeinde der vier Tribus*, in *Hermes*, xxx (1895). 1–24; controverted by Sp. Vassis, in *Athena*, ix (1897). 470–2; Kubitschek, W., *De romanorum tribuum origine ac propogatione* 1 ff.; Volquardsen, C. A., *Die drei ältesten röm. Tribus*, in *Rhein. Mus.* N. F. xxxiii (1878). 538–64; Bormann, E., *die älteste Gliederung Roms*, in *Eranos Vindobonensis*, 345–58; Holzapfel, L., *Die drei ältesten röm. Tribus*, in *Beiträge zur alten Geschichte*, i (1902). 228–55; Bertolini, C. I., *I celeres ed il tribunus celerum*; Zimmermann, A., *Zu Titus*, etc., in *Rhein. Mus.* N. F. l (1895). 159 f.; Schlossmann, S., *Tributum, tribuere, tribus*, in *Archiv f. lat. Lexicog.* xiv (1906). 25–40; Schulze, W., *Zur Gesch. lateinischer Eigennamen*, see index, s. Ramnenses, etc.

III. The Curiae: Pott, A. F., *Etymologische Forschungen*, ii. 373 ff.; Corssen, W., *Ausspr.* index, s. Curia; Vaniček, A., *Etymologisches Wörterbuch der lat. Sprache*, 160; *Griech.-lat. etym. Wörterbuch*, 1116; Niebuhr, ibid. i. 321–54; Schwegler, ibid. i. 610–12; Gilbert, ibid. index s. Curia; Richter, ibid. index s. Curia; Mommsen, *Röm. Staatsr.* iii. 89 ff.; Lange, ibid. i. 275–84, and index, s. Curia; Willems, P., *Sén. Rom.* ibid.; Bloch, G., *Orig. d. sén.* 290 ff.; Mispoulet, J. B., ibid. i. 7–9; Fustel de Coulanges, ibid. 154–7; Karlowa, ibid.; Genz, ibid. 32–50; Hoffmeister, K., *Die Wirtschaftliche Entwickelung Roms*, 5 f.; Soltau, ibid. 46–67; Müller, J. J., *Studien zur röm. Verfassungsgeschichte*, in *Philol.* xxxiv (1875). 96 ff.; Ihne, Wm., *History of Rome*, i. 113 f.; Newman, F. W., *Dr. Ihne on the Early Roman Constitution*, in *Classical Museum*, vi (1849). 15 ff.; Hoffmann, E., *Patricische und plebeiische Curien*; Kübler and Hülsen, *Curia*, in Pauly-Wissowa, *Real-Encycl.* iv. 1815–26; Pelham, H., *The Roman Curiae*, in (English) *Journal of Philology*, ix (1880). 266–79.

IV. The Gentes: Fustel de Coulanges, ibid. bk. ii; Leist, *Graeco-ital. Rechtsgesch.* 11 ff.; *Alt-arisches Ius Gentium; Alt-arisch. Jus Civ.* i. 461–76 (Irish Kin); Hirt, H., *Indogermanen*, ii. 409–56; Engels, F., *Der Ursprung der Familie, des Privateigentums und des Staats*, ch. v; Howard, G. E., *History of Matrimonial Institutions*, I. pt. i; Levison, W., *Die Beurkundung des Zivilstandes im Altertum*; Wildebrandt, M., *Die politische und sociale Bedeutung der attischen Geschlechter vor Solon*, in *Philologus*, Supplb. vii (1899). 135–227; Kovalevsky, M., *La gens et le clan*, in *Annales de l'institut international de sociologie*, vii (1900). 57–100; Ruggiero, E., *La gens in Roma avanti la formazione del comune*; Schwegler, ibid. i. 612–15; Lange, ibid. i. 211–59, and see index, s. v.; Mommsen, *Röm. Forsch.* i. 1–127; *Röm. Staatsr.* iii. 9–53, and see index s. v.; Mispoulet, ibid. i. 9–14; Willems, *Sén. Rom.* i. chs. i–iii; Müller, J. J., *Studien z. röm. Verfassungsgesch.* in *Philol.* xxxiv (1876). 96–104; Bloch, G., ibid. 102 ff.; *Recherches sur quelques gentes patriciennes*, in *Mélanges d'archéologie et d'histoire de l'école Francaise de Rome*, 1882. 241–76; Soltau, ibid. 58–64, 652–5; Bernhöft, ibid.; Genz, ibid. 1–31; Bloch, L., *Die ständischen und sozialen Kämpfe in der röm. Republik*; Holzapfel, L., *Il numero dei senatori Romani durante il periodo dei rei*, in *Rivista di storia antica*, ii. 2 (1897). 52–64; Marquardt, J., *Privatleben der Römer*, 1–26, 353 f.; Deecke, ibid. 275 ff. (on Italian names); Michel, N. H., *Du droit de cité Romaine*; Köhm, J., *Altlateinische Forschungen*, 1–21; Lécrivain, C., *Gens*, in Daremberg et Saglio, *Dict.* ii. 1504–16; Ruggiero, E., *Diz. ep.* iii (1906). 482–6; Casagrandi, V., *Le minores gentes ed i patres minorum gentium*; Staaf, E., *De origine gentium patriciarum*; Lieboldt, K., *Die Ansichten über die Entstehung und das Wesen der Gentes patriciae aus der Zeit der Humanisten bis auf unsere Tage*; Botsford, G. W., *Some Problems connected with the Roman Gens*, in *Political Science Quarterly*, xxii (1907). 663–92.

CHAPTER II

THE SOCIAL COMPOSITION OF THE PRIMITIVE POPULUS

This chapter[1] is primarily an inquiry into the social composition of the comitia curiata. At the same time it seeks to solve a problem which is doubtless the most fundamental in the early political and constitutional history of Rome. The result we reach will determine our conception of the whole course of constitutional development, and of the accompanying political struggles, to the complete equalization of the social ranks. For if we believe, as do many of the moderns,[2] that the primitive Roman state was made up exclusively of patricians, we are forced to the conclusion that the constitutional development to the passing of the Hortensian laws centred in the gradual admission of the plebeians and the clients to citizenship — perhaps even in the amalgamation of two distinct peoples. If on the other hand we take the ground that from the beginning the plebeians and the clients were citizens and voted in the comitia curiata, we must think of these inferior classes as struggling through the early history of their country for the acquisition not of citizenship but of various rights and privileges, social, economic, religious, and political, formerly monopolized by a patrician aristocracy. In attempting to solve the problem here proposed it will be advantageous to consider (1) the ancient view, (2) the conventional modern view, (3) the comparative-sociological view.

I. *The Ancient View*

The three social classes of freemen — plebeians, patricians, and clients — were formed within the citizen body by official recognition of existing distinctions not of nationality but of worth. The first step in the process was the differentiation of

[1] It is in the main a reproduction of my article on the subject in *Pol. Sci. Quart.* xxi (1906). 498–526.

[2] P. 25 ff.

the patricians from the plebeians. According to Cicero, Romulus constituted a number of chief men into a royal council, the senate, whose members he so highly esteemed as to have them called patres, and their children patricians.[1] Cicero thinks of the multitude as existing at first without a politically recognized nobility, yet showing natural distinctions of worth. By calling into the senate the ablest and best men, the state ennobled them and their families.[2] Livy's[3] view is similar: Romulus selected from the multitude a hundred senators, whom he named patres, and whose descendants were called patricians. They were chosen because of their wisdom;[4] on that ground the state granted them nobility,[5] which accordingly in Rome, as in every early community, was founded on personal merit.[6] In the more detailed theory of Dionysius,[7] Romulus "distinguished those who were eminent for their birth and celebrated for their virtue, and whom he knew to be rich in the account of those times and who had children, from the obscure and mean and poor. The lower class he called plebeians, Greek δημοτικοί, and the higher patres, either because they were older than the others, or had children, or were of higher birth, or for all these reasons. . . . The most trustworthy historians of the Roman constitution assert that owing to these facts they were called patres and their descendants patricians." According to Plutarch,[8] "Romulus, after forming the army, employed the rest of the people as the citizen body (δῆμος); the multitude he called

[1] *Rep.* ii. 8. 14; 12. 23: "Senatus, qui constabat ex optimatibus, quibus ipse rex tantum tribuisset, ut eos patres vellet nominari patriciosque eorum liberos."

[2] In the expression "omnibus patriciis, omnibus antiquissimis civibus," Cicero (*Caec.* 35. 101) intends no more than to include the patricians among the oldest citizens, whom he is contrasting with the newly-admitted municipes. Only the most superficial examination of the passage (cf. Willems, *Sén. Rom.* i. 7) could make "omnibus patriciis" equivalent to "omnibus antiquissimis civibus."

[3] I. 8. 7.

[4] Ibid.: "Consilium deinde viribus parat: centum creat senatores."

[5] Livy iv. 4. 7: "Nobilitatem istam vestram quam plerique oriundi ex Albanis et Sabinis non genere nec sanguine sed per coöptationem in patres habetis, aut ab regibus lecti aut post reges exactos iussu populi."

[6] Livy i. 34. 6: "In novo populo, ubi omnis repentina atque ex virtute nobilitas sit."

[7] II. 8. 1–3. In 12. 1, he shifts his point of view: Romulus chose the hundred original senators from the patricians.

[8] *Rom.* 13; cf. *Q. R.* 58.

populus, and appointed a hundred nobles to be councillors, whom he called patricians, and their assembly the senate.[1]

There can be no doubt, therefore, as to the opinion of the ancient writers. They believed that from the beginning social distinctions existed naturally within the populus Romanus, and that these distinctions were made the basis of an official division of the people into nobles and commons, patricii and plebs, by the government. This view is not only reasonable in itself, but is supported, as we shall see, by analogies drawn from many other states.

All the sources make the patriciate depend upon connection with the senate, Dionysius alone showing some inconsistency on this point.[2] Why the senators were called patres the ancients give various reasons. Cicero[3] thinks patres a term of endearment; Sallust[4] believes that the name was applied either because of age or because of the similarity of their duty; Livy[5] sets it down as a title of honor; Festus[6] thinks chiefly of their age and wisdom; Paulus,[7] his epitomator, suggests that they were so called because they divided their lands among the poorer class as fathers among children; Dionysius[8] gives three possible reasons, (1) greater age, (2) possession of children, (3) family reputation. The sources generally agree in representing the patres as men who in age, honor, authority and duty stood toward the rest of the citizens as a father toward his children, and in identifying these social-political patres with the

[1] Cf. further Ovid, *Fast.* iii. 127; Vell. i. 8. 6; Fest. 246. 23; 339. 11.

[2] There is no inconsistency, however, in the fact that some noble gentes claimed descent from Aeneas or from deities (cf. Seeley, *Livy*, 57) or from Alban or Sabine ancestors (cf. Livy i. 30. 2; iv. 4. 7; Dion. Hal. ii. 46. 3; iii. 29. 7); they were nobles in their original homes before the founding of Rome, but became patricians by an act only of the Roman government.

Although after the creation of the first hundred patres, the ancients do not distinctly state that each newly-made senator was the founder of a new patrician family, they do represent the enlargement of the senate and of the patriciate as going hand in hand; in this way they continue to make the patriciate depend upon membership in the senate; cf. Livy i. 30. 2; 35. 6; Dion. Hal. ii. 47. 1; iii. 67. 1; Madvig, *Röm. Staat.* i. 75.

[3] *Rep.*, ii. 8. 14; cf. (Aurel. Vict.) *Vir. Ill.* ii. 11.

[4] *Cat.* 6. 6; cf. Isid. *Etym.* ix. 6. 10: "Nam sicut patres suos, ita illi rem publicam habebant" (or "alebant").

[5] I. 8. 7. [6] 339. 11. [7] 247. [8] ii. 8. 1.

senators.[1] An examination of the word itself will tend to confirm the ancient view. It seems to have originally signified "protector," "keeper," "nourisher,"[2] hence "owner," "master." Pater familias is nourisher, protector, and master of a household.[3] In late Roman law the term continued to refer not necessarily to actual parentage but rather to the legal position of the head of a household;[4] in fact it is only in a distantly derived sense that pater comes to signify the male parent. Ideas early attaching to the word, accordingly, are those of power or authority and age. The senate, as this word indicates, was originally made up of elderly men, senatores, maiores natu.[5] It would be natural to call them patres because of their authority over the community or of their age. As a designation of rank, pater, excepting in jest, is always plural — an indication that the authority and dignity did not attach to the individual noble but to the senators collectively; they were collectively patres of the community, not individually patres of children, clients or gentes.[6] But when in time a limited number of families monopolized the senate, the term could easily be extended to the entire privileged circle, meaning those with hereditary right to authority over the rest of the community.[7] Though in the sources the patres are generally senators the word is sometimes synonymous with patricii.[8]

[1] Cf. Mommsen, *Röm. Forsch.* i. 227.

[2] From the root pa, to protect, preserve, conservare; Pott, *Wurzel-Wörterb. d. Indog. Spr.* (2d ed.), 221; Corssen, *Ausspr.* i. 424; Schrader, *Sprachvergl. u. Urgesch.* 538; Lécrivain, in Daremberg et Saglio, *Dict.* ii. 1507.

[3] *Dig.* 1. 16. 195. 2: "Pater familias appellatur qui in domo dominium habet." In like manner patronus is protector of clients, pater patriae protector of his country; Pott, ibid. 227.

[4] Ulpian, in *Dig.*, ibid.: "Pater autem familias recte hoc nomine appellatur, quamvis filium non habeat; non enim solam personam eius, sed et ius demonstramus: denique et pupillum patrem familias appellamus."

[5] Livy i. 32. 10 (from a fetial formula).

[6] Rubino, *Röm. Verfassung und Geschichte*, 186; Mommsen, *Röm. Forsch.* i. 228, n. 16.

[7] In the same way reges is made to include the whole family of the rex; Livy i. 39. 2. For other illustrations of the same principle, see Rubino, ibid. 188, n. 1.

[8] The Twelve Tables seem to apply it to all patricians, not to senators alone: Cicero, *Rep.* ii. 37. 63: "Conubia . . . ut ne plebei cum patribus essent;" Livy iv. 4. 5: "Ne conubium patribus cum plebe esset." These passages, however, do not afford absolute proof; for Gaius, bk. vi *ad legem Duodecim Tabularum* (*Dig.* 1. 16.

Regarding patricius the Romans reasoned with somewhat less care. They were right in deriving it from pater, but they made it signify "descended from," whereas in fact it means "belonging to,"[1] and designates accordingly the families of the political patres. Probably it was formed after patres began to be applied to the entire governing class — a development which would tend to throw the latter word back to its earlier and narrower sense.

Had the investigation of these words on the part of the ancients rested at this point, all would have been well; but an unfortunate guess as to the derivation of patricii by some unknown antiquarian has brought into the study of the social ranks unutterable confusion lasting down to the present day. This conjecture derives patricius from patrem ciere, making it signify "one who can cite a father." The attempted etymology, clearly a failure, would perhaps have been harmless, had it not connected itself with the ambiguous word ingenuus. Cincius[2] says, "Those used to be called patricians who are now called ingenui." Livy has the two ideas in mind when he represents a plebeian orator as inquiring, "Have ye never heard it said that those first created patricians were not beings sent down from heaven, but such as could cite their fathers, that is, nothing more than ingenui? I can now cite my father — a consul — and my son will be able to cite a grandfather."[3] There should be no doubt as to the meaning of these passages; the antiquarian who conjectured that patricius was derived from patrem ciere, and therefore defined patricii as those who could cite

238: "Plebs est ceteri cives sine senatoribus"), probably commenting on the very law quoted by Cicero and Livy, seems to understand patres as senators; cf. the prohibition of intermarriage between senators and their agnatic descendants on the one hand and freed persons on the other; *Dig.* xxii. 2. 44; Roby, *Rom. Priv. Law*, i. 130; Vassis, in *Athena*, xii. 57 f. In some instances, however, as in the expression "a patribus transire ad plebem" (Vell. ii. 45. 1) patres is certainly equivalent to patricii.

[1] Cf. gentilicius from gentilis; tribunicius from tribunus, Pott, ibid. 227. Patricius is an adjective signifying paternal, ancestral, belonging to parents or progenitors; Corssen, ibid. i. 53.

[2] In his work on the Comitia, quoted by Fest. 241. 21: "Patricios eos appellari solitos qui nunc ingenui vocentur."

[3] X. 8. 10: "En umquam fando audistis patricios primo esse factos non de caelo demissos, sed qui patrem ciere possent, id est nihil ultra quam ingenuos . . . ?"

their fathers, meant merely those who had distinguished fathers, and hence were of respectable birth. Ordinarily in extant Latin literature ingenui are simply the freeborn; and in making Appius Claudius Crassus in 368 include in the term the whole body of citizens Livy[1] dates this meaning back to the period before the Licinian-Sextian laws. Elsewhere are indications that in early times ingenui connoted rather respectable birth, and so applied especially to the patricians.[2] The quotations from Cincius and the attempted derivation of patricius from patrem ciere, accordingly, are sufficiently explained without resorting to the strange hypothesis, held by some, that in primitive Rome the patricians were the only men of free birth.

In summarizing the ancient view as to the origin and nature of the patriciate, it will be enough to say that the king chose from the people men who were eminent for the experience of age, for ability and reputation, to sit in his council, the senate; the men so distinguished were called patres, whereas the adjective patricius applied as well to their families — the patricii being those who could cite illustrious fathers.[3] From this point of view the Roman nobility did not differ from that of most other countries.

The plebs,[4] then, were the mass of common freemen, from whom the nobility was differentiated in the way described above.

[1] VI. 40. 6. The speaker contrasts ingenui with patricii.

[2] Plut. *Q. R.* 58: Those who were first constituted senators by Romulus were called patres and patricii as being men of good birth, who could show their pedigree. In its adjectival and adverbial uses ingenuus connotes not the quality of free birth, but respectability, nobility. The original meaning is "born within," hence indigeous, native; cf. Forcellini, *Totius Latinitatis Lexicon*, s. v. In this sense it could not apply to the patricians, who generally claimed a foreign origin. But native is superior to alien; doubtless in this secondary meaning of excellence it attached to the nobility, the close relation of the word to gens (family, lineage) attracting it in that direction. Afterward it was so democratized as to include all the freeborn. With this meaning we find it as early as Plautus, *Mil.* 784, 961. According to Dionysius, ii. 8. 3, the identification of patricii with ingenui in its sense of freeborn was accepted not by the most trustworthy historians, but by certain malicious slanderers: "Some say they were called patricians because they alone could cite their fathers, the rest being fugitives and unable to cite free fathers."

[3] P. 30.

[4] The word is probably derived from the same root as populus; Corssen, *Ausspr.* i. 368; cf. p. 1, n. 3 above.

From the ancient point of view they existed from the beginning, prior even to the patriciate itself.

It is equally true that in the opinion of the ancients the plebs were prior to the clients. Cicero[1] records that Romulus distributed the plebs in clientage among the chief men; Dionysius[2] adds that he gave the plebeians liberty to choose their patrons from among the patricians. Thus far their view is in complete accord with modern sociology, which teaches that such class distinctions first arise through the differentiation of freemen. Although aware of the fact that clientage existed in other states which were presumably older than Rome,[3] her historians doubtless felt that the institution could have been legalized in their own country by recognition only on the part of the government. They did not, however, work out a consistent theory of the relation between this class and the plebeians. Certain passages[4] hint, though they do not expressly assert, that at one epoch all the plebeians were in clientage, whereas in their accounts of political struggles the ancient writers uniformly array clients against plebeians almost from the beginning of the state.[5] The latter view is historically better founded.

There must have been various origins of clientage, with corresponding gradations of privilege. The libertini were citizens with straitly limited rights; other clients, certainly the greater part of the class, not only followed their patron to war[6] and to the forum,[7] but also testified and brought accusations in the courts[8] and voted in the assemblies;[9] and when the plebeians gained the right to hold offices the clients were admitted along with them to the same privilege.[10] In his relation with the state,

[1] *Rep.* ii. 9. 16. [2] ii. 9. 2.

[3] Notably among the Sabines, Livy ii. 16. 4; Dion. Hal. ii. 46. 3.

[4] Cicero, *Rep.* ii. 9. 16; Dion. Hal. ii. 9. 2.

[5] Cf. the citations in Mommsen, *Röm. Staatsr.* iii. 71, n. 1. Dionysius, ii. 63. 3, distinguished the two classes as early as the interregnum which followed Romulus.

[6] Dion. Hal. v. 40. 3; vi. 47. 1; vii. 19. 2; x. 43. As late as 134 Scipio called his clients to follow him to the Numantine war; Appian, *Iber.* 84.

[7] Livy iii. 58. 1. [8] Dion. Hal. ii. 10. 3.

[9] Livy ii. 56. 3; 64. 2; Dion. Hal. ii. 10. 3; iv. 23. 6; ix. 41. 5.

[10] Dion. Hal. ii. 10. 3 (it was not lawful for either patron or client to vote against the other). Marius, a client of Herennius, was elected to the praetorship; Plut. *Mar.* 5. A law declared that election to a curule office (according to Plutarch, or

therefore, the ordinary client did not differ essentially from the plebeian.

From the preceding examination of the social ranks it at once becomes evident that the ancients made the populus comprise both patricians and plebeians; in further proof of their view may be cited the following juristic definition: "Plebs differs from populus in that by the word populus all the citizens are meant, including even the patricians, whereas plebs signifies the rest of the citizens, excepting the patricians."[1] Since the sources generally consider the patricians the descendants of the hundred original senators,[2] they cannot help regarding the populus as composed chiefly of plebeians. In common speech the term, like our word people, often applies to the lower class as distinguished from the higher, in which sense it is interchangeable with plebs; often, too, it signifies the people in contrast with the senate.[3] It is clear, then, as Mommsen has pointed out,[4] that if populus signifies first the whole body of citizens and secondly the commons as distinguished from the nobles, it could not possibly have as a third equivalent the patricians as distinguished from the plebeians. In certain formulae found in addresses, wills, prayers, and oracles, populus is so joined with plebs (populus plebesque or the like) as to suggest the possible

as Marius asserted to any office) freed a man and his family from clientage. Evidently this law was passed in or after 367 B.C. Mucius, a client of Ti. Gracchus, was elected to the plebeian tribunate; Plut. *Ti. Gracch.* 13. Cn. Flavius, who was the son of a freedman and probably therefore a client, was elected curule aedile for 304; Livy ix. 46. 1; Val. Max. ii. 5. 2.

[1] Gaius 1. 3: "Plebs autem a populo eo distat, quod populi appellatione universi cives significantur connumeratis etiam patriciis; plebis autem appellatione sine patriciis ceteri cives significantur." Evidently Pomponius held the same view; *Dig.* i. 2. 2. 1–6; cf. Capito, in Gell. x. 20. 5; Fest. 233. 29; 330. 19; Isid. *Etym.* ix. 6. 5 f.; Mommsen, *Röm. Staatsr.* iii. 4, n. 2.

[2] Cicero, *Rep.* ii. 12. 23; Livy i. 8. 7; Zon. vii. 9; Isid. *Etym.* ix. 6. 6.

[3] Illustrations of this common use are Cicero, *Rep.* ii. 8. 14; 12. 23; Livy ii. 54. 3; iv. 51. 3; x. 13. 9; xxv. 2. 9; 3. 13; 3. 16; xxx. 27. 3; xxxiv. 54. 4; xxxvii. 58. 1; xliii. 8. 9. The Greeks always regard populus as the equivalent of δῆμος; cf. Plut. *Rom.* 13. Not only does the tribune in addressing the plebs call them populus Romanus (Sall. *Iug.* 31), but the consuls also apply the term to the same class (Livy xxv. 4. 4); and a statement of Cicero (*Leg. Agr.* ii. 7. 17), which has the appearance of a legal definition, makes the people of the thirty-five tribes under a tribune the universus populus Romanus.

[4] *Röm. Forsch.* i. 172.

meaning patricians.[1] The combination of the two words with senatus,[2] however, reveals at once the overlapping of the terms so joined. In these passages reference is to the modes by which an individual may approach the state; he may address the consuls, praetors, or plebeian tribunes, and in the same way the senate, populus, or plebs.[3] Hence in these formulae, merely representing groups of institutions through which the state is accustomed to act, the word populus does not apply solely to the patricians, and the same may be said of its use in all other connections. We may conclude, therefore, that the Latin language gives no hint of an exclusively patrician populus.

Regarding the populus as made up of patricians, plebeians, and clients, our sources necessarily ascribe the same social composition to its divisions, the three old tribes and the thirty curiae.[4] With perfect consistency they mention repeated enlargements of the populus and of the tribes and curiae, through the admission of masses of aliens, most of whom must have remained plebeian. In fact the sources uniformly represent all the kings as freely admitting conquered aliens without exception to the citizenship and to the tribes and the curiae, even compelling some forcibly to enter this condition.[5]

Might the plebeians and clients belong in a restricted sense to the populus and curiae, and yet remain so far inferior to the patricians as to be excluded from the political meetings of the curiae — the comitia curiata? There can be no uncertainty as to the answer to this question, for the ancient writers agree that the comitia curiata included plebeians and clients as well as

[1] Cic. *Fam.* x. 35; *Verr.* v. 14. 36; *Mur.* i. 1; Livy xxix. 27. 2: Tac. *Ann.* i. 8; Macrob. *Sat.* i. 17. 28; cf. Mommsen, *Röm. Forsch.* i. 169, n. 4.

[2] E.g. senatui populo plebique Romanae; Cicero, *Fam.* x. 35 (address).

[3] Mommsen, *Röm. Staatsr.* iii. 6, n. 4; Soltau, *Altröm. Volksversamml.* 84.

[4] For the division of the populus into tribes and curiae, see Cic. *Rep.* ii. 8. 14; Livy i. 13. 6; Dion. Hal. ii. 7. 2; App. *B. C.* iii. 94. The author of *Vir. Ill.* 2. 12, in supposing that the plebs alone were assigned to the tribes is certainly wrong; but his mistake is pardonable in view of the general agreement among our sources that the populus, πλῆθος, contained in the curiae were mainly plebeian.

[5] Cic. *Rep.* ii. 7. 13; 8. 14; 18. 33; Livy i. 13. 4; 13. 6; 28. 7; 30. 1; 33. 1–5; Dion. Hal. ii. 46. 2 f.; 47. 1; 50. 4 f.; 55. 6; iii. 29. 7; 30. 3; 31. 3; 37. 4; 48. 2; iv. 22. 3.

patricians.[1] Not only did the lower classes attend this assembly, but they also voted in it, and constituted the majority.[2]

II. *The Conventional Modern View*

The passages cited above suffice to prove that the ancient writers thought of the populus, and consequently of the comitia curiata, as composed from the earliest times of patricians, clients, and plebeians. Another question, far more difficult, is whether the ancients were right in their view.

As none of the authorities on whom we directly depend for our knowledge of Roman affairs lived earlier than the last century of the republic, they could have had no first-hand acquaintance with primitive Roman conditions, but must have drawn their information concerning the remote past from earlier writers — the annalists — now lost. Niebuhr, who in the opening years of the last century introduced the modern method of investigating Roman history, was convinced that writers of the late republic and of the empire, lacking historical perspective and interpreting their sources in the false light of existing or recent conditions, came to wrong conclusions in regard to the primitive Roman state. He believed he could point to instances of such misunderstanding, and he thought it within the power of a well-equipped modern historian to eliminate much of the error so as to come near to the standpoint of the earlier and more trustworthy annalists.[3]

The position of Niebuhr has in the main proved untenable. Notwithstanding all the source-sifting of modern times, pursued most zealously by the Germans, we are obliged to admit that it is rarely possible with any fair degree of certainty to discover the view of an annalist on a given subject excepting in the few cases in which the citation is by name. We must also

[1] Cf. Dion. Hal. ii. 8. 4.

[2] Livy i. 17. 11; 35. 2; 43. 10; 46. 1; Dion. Hal. ii. 10. 3; 14. 3; 60. 3; 62. 3; iv. 12. 3; 20. 2.

[3] Cf. *Lectures on the History of Rome*, i. 80, 83: "I beg you to mark this well . . . that even ingenious and learned men like Livy and Dionysius did not comprehend the ancient institutions and yet have preserved a number of expressions from their predecessors from which we, with much labor and difficulty, may elicit the truth."

admit that though Cicero and the Augustan writers might misinterpret Fabius Pictor in minor details, it is inconceivable that they should fail to understand his presentation of so fundamental a subject as the character of the original populus or the composition of the earliest assembly. Present scholarship accordingly insists that in such weighty matters there was no essential difference of view between earlier and later writers.[1]

These considerations have simplified but not solved the problem. Scholars now agree that no contemporary account of the regal period — ending 509 (?) B.C. — ever existed; and even if it be conceded that the earliest Roman annalist — Fabius Pictor, born about 250 B.C. — had access to traditional or documentary[2] information reaching back to the close of that period, no historian will admit such a possibility for the beginnings of Rome. It follows then that for the origin and character of her earliest institutions Cicero, Livy, and Dionysius, or their sources, have relied wholly on inference from later conditions, in so far as they have not resorted to outright invention. Though with their abundant material they were in a far better position for making such deductions than we are, they lacked the experience and the acute critical method of the moderns.[3] Of the three writers above mentioned — our main sources for the subject under discussion — Cicero was essentially an orator, Dionysius a rhetorician, and Livy, though historian in name, was in spirit rhetorical and dramatic rather than critical. Naturally therefore they or their sources, who on the whole were equally uncritical, made mistakes in the difficult work of drawing inferences as to the history and institutions of the regal period. Such is the view of historians today. It was formerly argued that Dionysius, a rhetorician and a Greek, failed in spite of his twenty-two years of preparation at Rome to understand the

[1] The school of Mommsen, which still clings to Niebuhr's theory of an exclusively patrician populus, has abandoned the attempt to support it by a reconstruction of lost sources.

[2] The late regal period may have left a few documents which, if used by the annalists, might have thrown light on the condition of that time. It has not yet been determined whether the inscription recently found in the Roman Forum belongs to the late regal or to the early republican period.

[3] Mommsen, *Röm. Staatsr.* iii. 69, grants to the ancients far more knowledge of their own history, but claims a "wider horizon."

spirit and character of the Roman constitution and has therefore been an especial fountain of error;[1] but it is now clear that though in his treatment of early Rome he shows far greater amplitude than Livy and is for that reason proportionally more liable to error in detail, he follows good Roman sources for institutions, and is in this field, with the reservation here mentioned, not essentially inferior to the extant native writers.[2]

Considering the sources untrustworthy and following certain clues which he believed they afforded to a right understanding of the annalists, Niebuhr came to his theory as to the composition of the primitive Roman state. Although he asserts that it was made up of "patrons and clients,"[3] he does not rest satisfied with this view, but proceeds to trace clientage to the following origins, as though in his opinion this institution did not exist from the beginning: (1) some native Siculians perhaps, who were conquered by Latin invaders; (2) strangers settling on Roman territory and choosing a Roman as protector; (3) inhabitants of communities which were obliged to take refuge under Roman protection; (4) manumitted slaves.[4] Logically he goes back to a state made up exclusively of patricians.

He sought evidence for this hypothesis in the scheme of tribal organization of Rome. The primitive city was divided into three tribes, thirty curiae and, as he believed, three hundred gentes. As no one could be a citizen without membership in a gens,[5] and as the patricians alone were active members of the gentes,[6] it must follow that the patricians alone were citi-

[1] Niebuhr treats Dionysius with great respect; cf. *Lectures*, i. liv: "The longer and more carefully the work is examined, the more must true criticism acknowledge that it is deserving of all respect, and the more it will be found a storehouse of most solid information." Schwegler, *Röm. Gesch.* i. 621 f., and 626 f., assumes that Dionysius is alone responsible for the view that the plebeians were in the primitive tribes and the curiae. A glance at the citations given above, p. 24 f., will show, however, that Cicero and Livy shared this view.

[2] Cf. Pais, *Storia di Roma*, I. 1. 82. The usual opinion (cf. Bernhöft, *Röm. Königsz.* 8 f.) is that the sources of Dionysius are later and less trustworthy than those of Livy, but Pais asserts that on the whole the two authors drew from the same sources.

[3] *Röm. Gesch.* i. 339, Eng. 165.

[4] *Lectures on Roman History*, i. 81, 100 f.

[5] *Röm. Gesch.* i. 332, Eng. 158.

[6] In ibid. i. 330, Eng. 162, he excludes the "freed clients" from the gens; in 339, Eng. 165, he states that the nobles alone *had* the gens, the clients belonged to it in a dependent capacity.

zens. It is doubtful whether he would have proposed this hypothesis had it not been for the analogy of the Attic tribal scheme. An imperfect quotation from the lost part of Aristotle's *Constitution of Athens*[1] seems to signify that the Athenian state was once divided into four tribes (*φυλαί*), twelve phratries and three hundred and sixty gentes (*γένη*). On this authority Niebuhr supposes that the phratry was a group of gentes, and he assumes further that both phratries and gentes were composed exclusively of eupatrids.[2] But the suppositions (1) that there were three hundred and sixty gentes, (2) that the phratry was a group of gentes, (3) that both phratries and gentes contained only eupatrids are contradicted by well known facts. From the earliest times the Greek tribes and phratries included commons as well as nobles. This is true of the Homeric Greeks,[3] and a law of Draco[4] proves that the early Attic phratry comprised both nobles and commons. In historical times all citizens belonged to the phratries; whereas but few were members of the gentes.[5] Most of the gentes were in fact composed of the old landed nobility, though a few, like the Chalkidae and the Eupyridae, were apparently industrial guilds, which had received the privileges of the gentes. So far therefore from supporting Niebuhr in his peculiar view of the Roman gentes and curiae, the Attic analogy militates in every way against him. As his assumption that the curia was a group of ten gentes has already been disproved,[6] it remains only to consider whether the gens was an exclusively patrician institution. From the circumstance that patricianism is not given as an element of Scaevola's definition, quoted by Cicero,[7] we may at once conclude that in their

[1] Cf. the edition of Sandys, 252; Rose, *Aristotelis Frag.* 385.

[2] *Röm. Gesch.* i. 326, Eng. 160. Genz, *Patricisches Rom*, 6, has the same idea.

[3] *Il.* ii. 362 f.; ix. 63 f. [4] *CIA.* i. 61; cf. Dem. xliii. 57.

[5] This is illustrated, for instance, by a law quoted by Philochorus, in Müller, *Frag. Hist. Graec.* i. 399. 94: Τοὺς δὲ φράτορας ἐπάναγκες δέχεσθαι καὶ τοὺς ὀργεῶνας καὶ τοὺς ὁμογάλακτας, οὓς γεννήτας καλοῦμεν ("The members of the phratry must receive the orgeones as well as the homogalaktes, whom we call gennetae"). This fact is now too well known to need further proof; cf. Gilbert, *Constitutional Antiquities of Sparta and Athens*, 148 f.; Thumser, *Griechische Staatsaltertümer*, 324 f.

[6] P. 11.

[7] *Top.* 6. 29: "Gentiles sunt inter se, qui eodem nomine sunt. Non est satis. Qui ab ingenuis oriundi sunt. Ne id quidem satis est. Quorum maiorum nemo servitutem servivit. Abest etiam nunc. Qui capite non sunt deminuti. Hoc for-

time plebeians, too, were gentiles. This conclusion is supported by a variety of evidence.

Several plebeian gentes are mentioned, including the Minucia and the Octavia,[1] the Lutatia,[2] the Calpurnia,[3] the Domitia,[4] the Fonteia,[5] the Aurelia,[6] and the Licinia.[7] Some gentes comprised both patrician and plebeian families, as the Cassia,[8] the Claudia,[9] the Cornelia,[10] the Manlia,[11] the Papiria,[12] the Publilia or Poplilia,[13] the Aebutia,[14] and the Servilia.[15] Not only do the sources refer to several plebeian gentes by name, but they clearly imply in other ways the existence of such associations. Livy[16] expresses

tasse satis est. Nihil enim video Scaevolam pontificem ad hanc definitionem addidisse;" cf. Cincius, in Fest. ep. 94.

As the word itself indicates, gentiles are members of a gens, and no other members are known to the sources. If it were true, as Mommsen, *Röm. Staatsr.* iii. 66, supposes, that there were dependent members not termed gentiles, a name would have been given this dependent relation, or the jurists would have defined it, or some ancient writer would at least have mentioned it. The attempt of Kübler, *Wochenschr. f. kl. Philol.* xxv (1908). 541 f., to prove, on the authority of Cicero, *Tim.* 11. 41, that clients were termed quasi gentiles is simply absurd. The passage does not even hint at clientage; and the quasi gentiles of the immortal gods, according to this passage, were related to the gods by birth, as the word gignatis proves. From this point of view men might be called the children of the gods; but because the divine element in both men and gods comes alike from the Creator, it is possible to place them more nearly on a level with one another — in a relation like that of gentiles. Kübler's other remarks on the gens, 539–43, are equally unconvincing.

[1] Cic. *Brut.* 16. 32; Livy iv. 16. 3; Suet. *Aug.* 2. Whether these two gentes had ever been patrician does not affect the question at issue.

[2] Val. Max. ix. 2. 1.

[3] Cic. *Har. Resp.* 15. 32, mentions sacrificia gentilicia of the Calpurnia.

[4] Suet. *Ner.* 1. [5] Cic. *Dom.* 13. 35. [6] Fest. ep. 23. [7] Varro, *R. R.* i. 2. 10.

[8] Unless Sp. Cassius, consul 502, 493, 486 B.C. and author of the first agrarian rogation, is a myth; cf. Drumann-Gröbe, *Gesch. Roms*, ii. 94.

[9] Cf. Cic. *Orat.* i. 39. 176. The patrician and plebeian branches are sometimes spoken of as distinct gentes; Suet. *Tib.* 1.

[10] Mommsen, *Röm. Forsch.* i. 113 f.; Drumann-Gröbe, ibid. 359.

[11] Cic. *Phil.* i. 13. 32; Gell. ix. 2. 11; Fest. ep. 125. [12] Mommsen, ibid. 116.

[13] L. Poplilius Volscus, patrician; Livy v. 12. 10. Q. Publilius Philo, plebeian; Livy viii. 15. 9.

[14] This patrician gens included an Aebutius who was tribune of the plebs (Cic. *Leg. Agr.* ii. 8. 21) and several other plebeians; Klebs, in Pauly-Wissowa, *Real-Encycl.* i. 442 f.

[15] Mommsen, ibid. 117 ff.

[16] V. 14. 4: "Comitiis auspicato quae fierent indignum dis visum honores volgari discriminaque gentium confundi."

the patrician sentiment that "it would seem an affront to the gods for honors to be vulgarized and for the distinction between gentes to be confused at auspicated comitia" (by the election of plebeians to the consular tribunate). "The distinction between gentes" can only mean the distinction between patrician and plebeian gentes — an interpretation confirmed by a similar statement of Cicero[1] to Clodius, who had passed by arrogation from a patrician to a plebeian gens: "You have disturbed the sacra and contaminated the gentes, both the one you have deserted and the one you have defiled" (by your admission into it). To our other proofs we may add the consideration that the very expression gentes patriciae[2] implies the existence of plebeian gentes. It is natural then that Varro[3] should make gentilitas a condition of men in general. In asserting that there were a thousand gentile names the same authority[4] must have included those of plebeians, for scarcely a hundred belonging to patricians could have been known to him. By no means the weakest argument in favor of the view here presented is the fact that the laws of the Twelve Tables concerning inheritance, tutelage,[5] etc. — which apply not to the patricians alone but to the whole citizen body — assume that every citizen in full possession of his civil rights belonged to a gens.

A passage often interpreted against the existence of plebeian gentes is Livy x. 8. 9: "Vos solos gentem habere." In this case a plebeian speaker says the patricians claim that they alone have gens (not gentes). The context shows clearly, however, that gens does not here denote an association but is used in the sense of illustrious birth or pedigree,[6] as is sometimes our word

[1] *Dom.* 13. 35: "Ita perturbatis sacris, contaminatis gentibus, et quam deseruisti et quam poluisti."

[2] Sall. *Iug.* 95. 3; Livy iii. 27. 1; 33. 9; vi. 11. 2; Gell. x. 20. 5; cf. ix. 2. 11.

[3] *L. L.* viii. 4: "Ut in hominibus quaedam sunt agnationes ac gentilitates, sic in verbis."

[4] In *Lib. Praen.* 3.

[5] It will suffice to quote Gaius iii. 17: "Si nullus agnatus sit, eadem lex XII Tabularum gentiles ad hereditatem vocat"; cf. Cic. *Verr.* i. 45. 115: "Lege hereditas ad gentem Minuciam veniebat." The Minucian gens was plebeian. Its right to the inheritance in question rested on this law of the Twelve Tables. For the gentile right of tutelage, see the so-called Laudatio Turiae, 15, 22 (*CIL.* vi. 1527; Girard, *Textes*, 778).

[6] Cf. p. 20; see also Auct. Inc. *De Diff.* 527 (Keil): "Gens seriem maiorum explicat."

family.[1] Wherever a nobility exists it necessarily lays greater stress on descent than do the people, and in all countries the nobles are in a far better position to keep up family connections than are the commons. Naturally therefore at Rome we hear more of patrician than of plebeian gentes. But in view of all the facts mentioned above there should be no doubt as to the existence of the latter. The result of this discussion is that neither in the composition of the gens nor in its position in the community can support be found for Niebuhr's assumption of a patrician state.[2]

Other evidence for his hypothesis Niebuhr thinks he finds in a statement of Labeo,[3] that the curiate assembly was convoked by a lictor, the centuriate by a horn-blower; while Dionysius[4] says that the patricians were summoned by name through a messenger, the people by the blowing of a horn. Thus Niebuhr maintains that Labeo and Dionysius agree unequivocally in designating the curiae as the assembly of the patricians. But in fact these two sources refer to the customs of the historical age, when the curiate assembly was ordinarily attended by only three augurs and thirty lictors. Horn-blowing under these circumstances would have been absurd. The summoning of the patricians by their own name and that of their father, on the other hand, proves them too few to compose a popular assembly. These citations therefore are far from supporting his hypothesis. His last and greatest proof is the identification of the lex de imperio, passed by the curiae, with the patrum auctoritas. If these are merely two terms for the same act, the curiae must have been made up of patres. But by establishing the fact that the patrum auctoritas belonged to the senate or to its patrician members, Willems[5] and Mommsen[6] have deprived Niebuhr's hypothesis of its main prop.

Niebuhr evidently believed that the curiae continued ex-

[1] E.g. "Family will take a person everywhere"; C. D. Warner, quoted by the *Standard Dictionary*, s. v.

[2] Mommsen's theory of the gens — a development from Niebuhr's — is criticized in *Pol. Sci. Quart.* xxii (1907). 668 f. The distinction between patrician gentes and plebeian stirpes, on which he especially relies, is there shown to be groundless.

[3] Gell. xv. 27. 2. [4] II. 8. 4. [5] *Sén. Rom.* ii. 34 f.

[6] *Röm. Forsch.* i. 233 f.; 247 f.; cf. Genz, *Patr. Rom*, 70. On the patrum auctoritas, see p. 235 below.

clusively patrician through the whole republican period.[1] This idea, however, must be dismissed for the following reasons: (1) Our sources agree that in the early republic the plebeians and clients continued to vote in the curiate assembly.[2] (2) The plebeians were in the curiae in 208 B.C., when the first curio maximus was chosen from the plebs.[3] (3) In the time of Cicero thirty plebeian[4] lictors represented the comitia curiata, and gave the votes.[5] (4) Arrogations by plebeians took place in this assembly; in the well-known case of Clodius it must be borne in mind that it was a plebeian who arrogated him. (5) The extinction of the patriciate did not involve the downfall of the comitia curiata.[6] (6) The confirmation by the curiae (lex de imperio) of elections in the centuriate assembly was conceived as a second vote of the community.[7] (7) The resolutions of the comitia curiata are always thought of as resolutions of the populus, which Latin literature nowhere restricts to the patrician body. (8) In all ancient literature there is nowhere the slightest hint of a change in the social composition of the curiae or of the comitia curiata in the whole course of their history. What the ancients believed to be true of either institution at any particular period will hold therefore for its entire history.[8]

Of the arguments in favor of Niebuhr's hypothesis either added by Schwegler[9] or brought by him into greater prominence, one only demands attention. He reasons that if the

[1] E.g. *Röm. Gesch.* ii. 359; iii. 168; Eng. ii. 147; iii. 73: "the common council of the patres — the curies."

[2] *Cic.* Frag. A. vii. 48; Livy ii. 56, especially § 3; Dion. Hal. vi. 89. 1; ix. 41.

[3] Livy xxvii. 8. 3.

[4] Mommsen, *Röm. Forsch.* i. 148.

[5] *Cic. Leg. Agr.* ii. 12. 31.

[6] *Cic. Dom.* 14. 38; Livy vi. 41. 10.

[7] P. 185 below; cf. Mommsen, *Röm. Forsch.* i. 147 f.

[8] In the face of all evidence to the contrary two or three scholars persist in maintaining essentially the opinion of Niebuhr that through the republic the curiae continued patrician. Herzog, *Röm. Staatsverf.* i. 98 f., 108, 1014, n. 2, imagines that from the beginning the clients belonged to the curia in its administrative capacity, shared in its sacra, attended its meetings, but did not vote. The plebs, however, were not even passive members. His reasons do not deserve mention. Vassis, Ῥωμαίων Πολιτεία ἡ βασιλευομένη καὶ ἡ ἐλευθέρα (Athens, 1903), also excludes the commons from the curiate assembly throughout its history. The fancies of Hoffmann, *Patr. und pleb. Curien*, need not detain us.

[9] *Röm. Gesch.* i. 623 f.

plebs were in the curiate assembly, it would be impossible to explain the political advance made by the institution of the comitia centuriata; and the constitutional history of Rome would be reduced to an insoluble riddle. Here we have to deal with a subjective argument — the rejection of sources because they do not agree with a preconceived theory. Arguments of the kind, however, which may be easily invented for the support or overthrow of every imaginable proposition, carry little weight. Besides it is easy to show by analogies from the history of other peoples that the presence of the commons in the primitive assembly does not make the constitutional history of Rome a real enigma. In the primitive German assembly, for instance, were included all the warriors; and yet in the more developed German states were monarchies and aristocracies which gave the people little or no voice in the management of public affairs.[1] The Homeric Greek assembly included all freemen, who, however, had little to do with the government in that period, and still less under the aristocracy which followed.[2] In like manner, although the plebeians attended the comitia curiata and had a majority of votes in this assembly, they could not thereby control the government, for they absolutely lacked initiative.[3] The comitia centuriata, a timocratic institution, elevated the rich and degraded the poor. Here as elsewhere the poor lost by the substitution of aristocracy for kingship; but a real constitutional advance was made in the gradations of privilege, which were based on wealth and which reached like a ladder from the humblest member of the proletarian century to the patrician knight in the sex suffragia.[4] These gradations prepared the way for an ultimate equalization of rights. We conclude, then, that the presence of the commons in the primitive assembly is perfectly compatible with a rational view of constitutional development.

With Schwegler, who grants however reluctantly that the commons were received into the curiae before 208,[5] the theory enters upon its present phase; for the great majority of writers since his time have accepted his view, yet with varying opinions as to the date of the change. Mommsen,[6]

[1] Cf. p. 152, 172.
[2] Cf. p. 170, 172.
[3] P. 173 ff., 345.
[4] P. 75, 96, 209.
[5] *Röm. Gesch.* i. 625, n. 3.
[6] *Röm. Forsch.* i. 140 f.

who more than any one else has made it clear that, so far back as our sources reach, the populus comprised both patricians and commons, nevertheless assumes that the latter were originally outside the populus but were admitted no later than the beginning of the republic.[1] In his reconstruction of the primitive state he supposes that the citizens were all patres, in so far as they, and they alone, could be fathers; or adjectively patricii, in so far as they, and they alone, had fathers.[2] Added to the citizens and their slaves was a class of persons termed clients, half way between freedom and slavery — a class made up from various origins but chiefly by the conquest of neighbors.[3] These clients belonged, as dependents of the gentes, to the curiae, but had no vote in the assembly.[4] Later the plebs were formed from the clients as the bond which united the latter with their patrons relaxed.[5] The plebs, who were free citizens of inferior rank, came into being at the moment when the patricio-plebeian comitia centuriata acquired the right to express the will of the community.[6]

Although Mommsen knows well the weakness of the evidence offered by earlier writers, he adopts the hypothesis of an original patrician state, without attempting a systematic defence. Here and there in his works, however, he mentions some fact or condition which he would like to have considered proof. The following are the chief passages of this kind:

(1) The lack of right to the auspicia[7] and to the imperium[8] on the part of the plebeians proves that the patriciate was the original citizenship.

But we could as reasonably say, with reference to the auspices, that the two Attic gentes which furnished the sacred exegetes contained the only Athenian citizens.[9] The auspicia, as Soltau[10]

[1] *Röm. Forsch.* i. 269; *Röm. Staatsr.* iii. 92. Clason, *Krit. Erört. über den röm. Staat*, 12, supposes they were admitted by the Ogulnian law, in 300. Genz, *Patr. Rom*, 41, 62, places their admission not earlier than the institution of the Servian tribes and not later than the decemvirate, greatly preferring the latter date.

[2] *Röm. Staatsr.* iii. 13; *Abriss*, 5.

[3] *Röm. Staatsr.* iii. 54 f.

[4] Ibid. iii. 91.

[5] Ibid. iii. 63.

[6] Ibid. iii. 67 f.

[7] Ibid. i. 91, n. 1; cf. Lange, *Röm. Alt.* i. 261 f. Reference here is only to the auspicia publica of the magistrates. It is established below (p. 101 ff.) that from the beginning the plebeians had a right to private auspices.

[8] *Röm. Staatsr.* iii. 77.

[9] Cf. Töpffer, *Attische Genealogie*, 177.

[10] *Altröm. Volksversamml.* 93.

has noticed, belonged to the ius honorum, as did also the imperium; hence they were both privileges of the nobility. In brief Mommsen's reasoning would make a governing nobility everywhere impossible.

(2) The cavalry were patrician; therefore the infantry must have been.[1]

With the same kind of reasoning we could conclude that because in the Homeric age of Greece chariots were used in war by nobles only, the infantry must also have been exclusively noble; whereas we know that the rank and file were common men.[2] That the Roman army before Servius was similarly composed is supported not only by this and many other analogies, but also by the unanimous testimony of the sources. As in other primitive states the warriors belonged to the assembly and were the citizens.

(3) Of the sixteen local tribes named after gentes it can be proved that ten have the names of patrician gentes, and not one name is known to be plebeian. This is evident proof that from the beginning the patriciate was not nobility but citizenship.[3]

His premises prove no more than that at the time when these tribes were instituted the patricians were influential enough to give their names to ten, probably to all sixteen. In all the three cases mentioned, Mommsen reasons that because the patricians alone enjoyed the honors, privileges, and influence usually considered appropriate to a nobility, they must therefore have constituted not the nobility simply but the whole citizen body.

(4) He identifies patres with gentiles and assumes that the primitive state was an aggregate of gentes, thus making the patres the only members of the state.[4]

These are not proofs but unsupported assumptions. The only connection of patres with gentes given in Latin literature is in the well-known phrases patres maiorum and minorum gentium; and Cicero[5] makes it clear that these patres were senators.

[1] *Röm. Staatsr.* iii. 109.

[2] P. 69.

[3] *Röm. Forsch.* i. 106 f. and n. 80.

[4] *Röm. Staatsr.* iii. 13.

[5] *Rep.* ii. 20. 35: "Duplicavit illum pristinum patrum numerum et antiquos patres maiorum gentium appellavit, quos priores sententiam rogabat, a se adscitos minorum." The connection shows that Cicero is speaking of two classes of senators distinguished by the rank of the gentes from which they respectively came.

The phrase means senators from, or belonging to, the greater or lesser gentes. Furthermore it has been proved (1) that the patricians were not the only gentiles,[1] (2) that the curia, and hence the state, was not an aggregation of gentes.[2]

(5) We are informed, says Mommsen, (a) that the body of full Roman citizens consisted originally of a hundred families, whose fathers, the patres, regarded more or less concretely as the ancestors of the individual gentes, composed the senate, and together with them their descendants, the patricians, made up the citizen body; or expressed in other words (b) patrician originally meant just what was afterward included under the term ingenuus.[3]

For (a) Mommsen cites those passages by which it has been shown[4] that the Romans looked upon the original hundred senators as the fathers neither of the "citizen body" nor of the "full citizens," but of the nobility. His statement of the case is directly contradicted by the authorities he quotes. As regards (b) it has been sufficiently proved[5] that ingenuus when made equivalent to patricius most naturally signifies not "of free birth," but "of respectable, noble birth."

Most scholars have wisely avoided bringing the myth of the asylum[6] into the argument. Pellegrino,[7] however, identifies the refugees at that place with the entire plebeian body. As the asylum was not an Italian but a Greek institution,[8] the story connected with it is doubtless a myth. It seems to have been invented by the Greeks of southern Italy, most probably in the fourth century B.C. At that time they began to view with alarm the southward advance of the Romans, and to disparage them accordingly by falsifications representing their origin as obscure and disreputable.[9] Similar calumnies against other peoples were

[1] P. 28 f. [2] P. 11 f. [3] *Röm. Staatsr.* iii. 14. [4] P. 17 f. and notes. [5] P. 20 f.

[6] For the sources, see Schwegler, *Röm. Gesch.* i. 459 f.; Stengel, in Pauly-Wissowa, *Real-Encycl.* ii. 1885.

[7] *Andeutungen über den urspr. Religionsunterschied der röm. Patr. und Pleb.* 1 f.

[8] Cf. Livy xxxv. 51. 2; Serv. *in Aen.* ii. 761. Schwegler, ibid. 464–8, who insists on this fact, shows clearly that no historical value attaches to the myth; see also Pais, *Storia di Roma*, I. i. 218, n. 1.

[9] Pais, ibid. 217 ff. Dionysius, i. 4. 2 f., expressly states that this story is a Greek falsification.

concocted by their Greek enemies.[1] Notwithstanding the fact that the story had not even a kernel of historical truth the Romans accepted it with more or less modification [2] and used it to some extent for partisan objects.[3] They could not oppose the plebs to patricians as foreigners to natives, however, for (1) they supposed that plebeians as well as patricians participated in the original settlement of Rome, (2) they derived patrician as well as plebeian families from foreign sources.[4] We are warranted in concluding that in adopting the Greek myth of the asylum they looked upon it as a cause of increase in the plebeian population without finding in it the origin of the plebeian class.

To the theory of an exclusively patrician populus the following objections may be summarily urged: (1) It is opposed by the unanimous testimony of the ancient authorities. (2) It rests upon a wrong explanation of the words patres, patricii, as designations of the nobles. (3) It is further propped up by reasons so feeble as to testify at once to its weakness, the more substantial basis having been overthrown partly by Mommsen himself. (4) The number of patricians is too small for the theory.[5] (5) It ignores the meaning of the word plebs, which evidently signifies "the masses," in contrast with the few nobles, and hence could not apply to a class gradually formed by the liberation of clients, or by the admission of foreigners. No one who holds the theory has attempted to show what these liberated clients were called when they were but few compared with the patricians — before they became "the multitude." (6) It is contradicted by everything we know of Rome's attitude

[1] See the examples collected by Pais, ibid.

[2] Cf. Livy i. 8. 5.

[3] Cf. ibid. ii. 1. 4.

[4] Dionysius, i. 85. 3, states that the colonists from Alba were mostly plebeians, but that a considerable number of the highest nobility accompanied them. It is a significant fact, however, that no patrician family is known to have derived its origin from this earliest colony. Those who claimed Alban and Trojan descent preferred to connect their admission to citizenship with the Roman annexation of Alba Longa, e.g. the Tullii, Servilii, Quinctii, Geganii, Curiatii, and Cloelii; Livy i. 30. 2. On the Alban and Sabine origin of most of the nobility, Livy iv. 4. 7. In so far as the local cognomina are indicative of origin (cf. Willems, *Sén. Rom.* i. 11 ff.), they point to a diversity of foreign connections. The Tarquinian gens, which in later time was thought of as patrician, came from Etruria, ultimately from Greece. The Aemilii were Greek (Plut. *Aem.* 1; Fest. ep. 23) or Sabine (Plut. *Num.* 8) or Oscan (Fest. 130. 1).

[5] Cf. p. 31 above. For details, see *Pol. Sci. Quart.* xxii. 679 ff.

towards aliens. So far back as our knowledge reaches, she was extremely liberal in bestowing the citizenship, even forcing it upon some communities. Only when she acquired the rule over a considerable part of Italy did she begin to show illiberality in this respect. Down to 353 the citizenship thus freely extended included the right to vote.[1] (7) It assumes the existence of a community politically far advanced yet showing no inequalities of rank among the freemen — a condition outside the range of human experience. It aims to explain the origin of the social classes on purely Roman ground, ignoring the fact that distinctions of rank are far older than the city, and exist, at least in germ, in the most primitive communities of which we have knowledge.[2]

III. *The Comparative-Sociological View*

As social classes belong to all society,[3] they cannot be explained by the peculiar conditions of any one community. The

[1] That Caere was the first community to receive the civitas sine suffragio may justly be inferred from the expression "Caerite franchise," which designates this kind of limited citizenship (cf. p. 62). The general fact stated in (6) is further confirmed by the law which granted the right of extending the pomerium to those magistrates only who had acquired new territory for Rome; Gell. xiii. 14. 3; Tacitus, *Ann.* xii. 23.

[2] Since the publication of the *Staatsrecht*, writers have made slight modifications or extensions of the conventional theory. Greenidge, in Poste, *Gaii Institutiones*, xix, suggests that the dual forms in Roman law may have as their basis a racial distinction between the patricians and the plebeians. A serious objection to this kind of reasoning is that if we are on the lookout for dualities, trinities, and the like, we shall find them in abundance everywhere. All sorts of theories as to the racial connections of the two social classes have been proposed. Zöller, *Latium und Rom*, 23 ff., supposes that the patricians were Sabine and the plebeians Latin. Ridgeway, *Early Age of Greece*, i. 257, holds that the plebeians were Ligurians, whereas Conway, in *Riv. di Stor. ant.* vii (1903). 422–4, prefers to consider them Volscians. These notions are equally worthless. Undoubtedly race is a potent factor in history; but Gumplowicz, *Rassenkampf* (1883), has killed the theory by overwork.

Among the writers who have rejected the conventional view are Soltau, *Altröm. Volksversamml.* (1880); Bernhöft, *Röm. Königsz.* (1882); Pelham, *Outlines of Roman History* (1893; reprint of his article on "Roman History," in the *Encycl. Brit.*); Meyer, *Gesch. d. Alt.* ii (1893); Holzapfel, in *Beitr. z. alt. Gesch.* i (1902). 254.

[3] Meyer, *Gesch. d. Alt.* ii. 80; Featherman, *Social History of the Races of Mankind*, ii. 408; Hellwald, *Culturgeschichte*, i. 175; Barth, *Philosophie der Geschichte*, i. 382. It would be practicable by the citation of authorities to prove the existence of such distinctions in nearly every community, present or past, whose social condition is sufficiently known.

only scientific approach to this subject is through comparative study; the inferences of the ancient historians relative to primitive Rome are not to be displaced by purely subjective theories, but are to be tested by comparison with conditions in other communities of equal or less cultural advancement.

Distinctions of rank depend ultimately upon physical, mental, and moral inequalities,[1] which differentiate the population of a community into leaders and followers.[2] The exhibition of physical strength and skill on the part of young men and of knowledge and wisdom on the part of the elders are often "the foundation of leadership and of that useful subordination in mutual aid which depends on voluntary deference."[3] In an age in which men were largely under the control of religion the possession of an oracle or skill in divination or prophecy might contribute as much to the elevation of an individual above his fellows.[4] Leadership, once obtained, could display and strengthen itself in various ways. In primitive society the strong, brave, intelligent man was especially qualified to take command in war. Success brought the chief not only renown but a large share of the booty and in later time acquired land. The same result might be obtained by other means than by war;[5] but in any case wealth and influence inherited through

[1] Giddings, *Principles of Sociology*, 124; Tarde, *Laws of Imitation*, 233 f.; Fairbanks, *Introduction to Sociology*, 158; Grave, *L'individu et la société*, 23; Funck-Brentano, *Civilisation et ses lois*, 71 f.; Caspari, *Urgeschichte der Menschheit*, i. 125 f.; Hellwald, ibid. i. 175, 177; Ross, *Social Control*, 80.

[2] Giddings, ibid. 262; Ammon, *Gesellschaftsordnung*, 133 f.; Cherbuliez, *Simples notions de l'ordre social à l'usage de tout le monde*, 38 f.; Dechesne, *Conception du droit*, 36; Grave, ibid. 23 f.; Caspari, ibid. i. 133 f.; Harris, *Civilization considered as a Science*, 211; Lepelletier de la Sarthe, *Système sociale*, i. 329; Mismer, *Principes sociologiques*, 63 f.; Rossbach, *Geschichte der Gesellschaft*, i. 13 f.; Schurtz, *Urgeschichte der Kultur*, 385; Hittell, *Mankind in Ancient Times*, i. 228 f.; Maine, *Early History of Institutions*, 130; Seebohm, *Tribal System in Wales*, 139; Post, A. H., *Anfänge des Staats- und Rechtslebens*, 150 f.

[3] Giddings, ibid. 262; cf. Arnd, *Die materiellen Grundlagen . . . der europäischen Kultur*, 444 f.; Frohschammer, *Organisation und Kultur der mensch. Gesellschaft*, 84 f.; Bastian, *Rechtsverhältnisse bei verschiedenen Völkern der Erde*, 20 f.; Spencer, *Principles of Sociology*, ii. 333, 335.

[4] Frazer, *Early Hist. of the Kingship;* Spencer, ibid. ii. 338 f.; cf. for the Malays, Skeat and Blagden, *Pagan Races of the Malay Peninsula*, 499.

[5] Cf. Rubino, *Röm. Verf.* 183; Spencer, ibid. ii. 334 f.; Seebohm, *Tribal System in Wales*, 72.

several generations made nobility.[1] Primarily grounded on ability, wealth, and renown, this preëminence was often heightened by a claim to divine lineage or other close connection with the gods.[2]

There was evidently a stage of development — before the association of the nobles into a class — in which chieftains alone held preëminence. This condition is common in primitive society, as among the American Indians.[3] Also among the Germans, who had advanced somewhat beyond this stage, each chief or lord appears to have been noble "less with reference to other noblemen than with reference to the other free tribesmen comprised in the same group with himself."[4] From Brehon law we infer that the Irish lords were individually heads of their several groups of kinsmen or of vassals;[5] and in Wales the nobles were a hierarchy of chieftains.[6] As soon as leadership became hereditary there arose noble families, in which the younger members were often sub-chieftains;[7] and finally through intermarriage among these families, as well as through the discovery of common interests, the nobles associated themselves into a class.

Among the ancient Germans,[8] the Greeks of the Homeric

[1] Aristotle, *Politics*, 1294, a 21; Giddings, *Principles of Sociology*, 293 f.; Jenks, *History of Politics*, 30 f.; Grave, *L'individu et la société*, 25; Combes de Lestrade, *Éléments de sociologie*, 185; Schurtz, *Urgeschichte der Kultur*, 148, 385; Featherman, *Social History of the Races of Mankind*, see index, s. Classes; Hittell, *Mankind in Ancient Times*, i. 228; Maine, *Early History of Institutions*, 134; Ginnell, *Brehon Laws*, 60 f.; Farrand, *Basis of American History*, 114, 201; Bluntschli, *Theory of the State*, 149.

[2] Grave, ibid. 30 f.; Combes de Lestrade, ibid. 184 f.; Funck-Brentano, *Civilisation et ses lois*, 68 f.; Spencer, ibid. ii. 348 f.; Schurtz, ibid. 150 f.; Featherman, ibid. ii. 128, 197 f., 311; Letourneau, *Sociology*, 480 f.; Bastian, *Rechtsverhältnisse*, 8 f.

[3] Cf. Schurtz, ibid. 148; Farrand, ibid. 114, 129, 141. For the Malays, see Skeat and Blagden, ibid. 494 ff.

[4] Maine, ibid. 132.

[5] Maine, ibid.; Ginnell, *Brehon Laws*, 63 f., 93 f.

[6] Seebohm, *Tribal System in Wales*, 134 f.

[7] As in Wales; Seebohm, ibid. 139; cf. the Inca grandees, who all claimed descent from the founder of the monarchy; Letourneau, *Sociology*, 479.

[8] Tac. *Germ.* 13. 3: "Insignis nobilitas aut magna patrum merita principis dignationem etiam adulescentulis adsignant." It is clear that the family of a youth who receives an office or dignity because of the merits of his ancestors is coming near to nobility.

age,[1] and in some early Italian states[2] certain families had become noble, and others were on the way to nobility. For ancient Ireland the entire process can be followed. A common freeman enters the service of some chief, from whom he receives permission to use large portions of the tribe land.[3] By pasturing cattle, he grows wealthy, becomes a bo-aire (cow-nobleman) and secures a band of dependents. Supported by these followers, he preys upon his neighbors and, if successful, becomes in time a powerful noble.[4] After "a certain number of generations" he can no longer be distinguished from the blooded nobility.[5] Here is an instance of a common freeman's becoming noble through service to a chief. In like manner among the Saxons who had conquered England the ceorl who "thrived so that he had fully five hides of land," or the merchant who had "fared twice over the wide sea by his own means," became a thane; "and if the thane thrived, so that he became an eorl, then was he henceforth worthy of eorl-right."[6] "The thanes were the immediate companions of the king — his comitatus — and from their first appearance in English history they took rank above the earlier nobility of Saxon eorls, who were descended from ancient tribal chiefs. Thus the thanes as a nobility of newly rich corresponded to the cow-noblemen of an earlier time."[7] In the way just described many rose from the lower ranks to nobility. In fact, eminent authorities assert that the inferior

[1] A certain man of illegitimate birth, hence of inferior social standing, through martial skill and daring becomes a leader of warriors, acquires wealth, marries the daughter of a notable, "waxes dread and honorable" among his countrymen, who elect him to a high military command by the side of their hereditary chief; the taint of his birth is forgotten; Od., xiv. 199; cf. Bernhöft, *Röm. Königsz.* 123.

[2] Livy viii. 39. 12; x. 38. 7: "Nobilissimum quemque genere factisque," with reference to the Samnites; some were nobles by birth, others by prowess; cf. 46. 4: "Nobiles aliquot captivi clari suis patrumque factis ducti;" some of these captives were noble through their own prowess, others through that of their ancestors. The Samnite nobility was in the formative stage like that of the German nobility in the time of Tacitus. The Yakonan of California are in this condition; Farrand, *Basis of American History*, 129.

[3] Maine, *Early Hist. of Inst.* 135 f.; Giddings, *Principles of Sociology*, 294 f.

[4] Cf. Giddings, ibid. [5] Maine, ibid. 136. [6] Laws of Athelstan.

[7] Giddings, *Principles of Sociology*, 296; cf. Maine, *Early Hist. of Inst.* 141. Thus in the time of Tacitus the German youth of common blood who entered the comitatus of a chief had a fair opportunity to become noble; *Germ.* 13. 3–5; 14. 1 f. Among the Danes, too, some noble families were once peasant; Maine, ibid. 135.

nobles, especially of the middle age, were more often of servile than of free origin, as the common freemen were inclined to think it degrading to be seen among the comites of a chief.[1]

It has now been sufficiently established that even in the tribal condition people were differentiated into social ranks. We have traced the beginning of nobility to leadership and have found, in both ancient and mediaeval society, new noble families forming by the side of the old. Social distinctions were well developed long before the founding of cities. When a community, whether a tribe or a city, is far enough advanced to begin the conquest of neighbors, "it has already differentiated into royal, noble, free, and servile families."[2] This was true of Sparta. In her "the conquerors nevertheless, notwithstanding great differences among themselves, remain sharply separated in social function from the conquered . . . The conquerors became a religious, military, and political class, and the conquered an industrial class."[3] Even in the case of Sparta, however, which is perhaps our best example of the exclusiveness of a ruling city, there is evidence of mingling between the conquering Spartans and the conquered Laconians before the former became exclusive.[4] In like manner there was much mixing of the invading "Aryans" with the natives of India — the more intelligent of the natives rising to the higher classes and the less gifted of the invaders sinking to the lower — before the crystallization of the castes.[5] We find the same mingling of conquerors and conquered in varying degrees in ancient Ireland,[6] in England under the Normans,[7] and throughout the Roman empire in the

[1] Brunner, *Deutsche Rechtsgeschichte*, i. 235 f., 252; Maine, ibid. 138; Ammon, *Gesellschaftsordnung*, 135; Schurtz, *Urgeschichte der Kultur*, 148 f.; Bluntschli, *Theory of the State*, 131, 155; Tarde, *Laws of Imitation*, 237.

[2] Giddings, *Principles of Sociology*, 315; cf. Combes de Lestrade, *Éléments de sociologie*, 185; Rossbach, *Gesch. der Gesellsch.* i. 14. A nobility formed purely by conquest, if such indeed exists, must be rare, and can hardly be lasting; Schurtz, *Urgesch. der Kul.* 149.

[3] Giddings, ibid. 315; cf. Grave, *L'individu et la société*, 32.

[4] Strabo viii. 4. 4, p. 364; Aristotle, *Politics*, 1270, a 34.

[5] Schurtz, *Urgesch. der Kult.* 165.

[6] Ginnell, *Brehon Laws*, 145.

[7] Bluntschli, *Theory of the State*, 142; Freeman, *Norman Conquest*, iv. 11. There were nobles both in England and in Normandy before the conquest. After the battle of Senlac most of the English nobles submitted to William, and were allowed to

period of Germanic settlements.[1] It becomes doubtful, therefore, whether a nobility was ever formed purely by the superposition of one community upon another. The effect of conquest was rather to accentuate existing class distinctions, and by a partial substitution of strangers in place of native nobles to stir up antagonism between the classes. Even where the differences between the social ranks seem to be racial, it would be hazardous to resort to the race theory in explanation; for such a condition could be produced in the course of generations by different modes of life, education, nurture, and marriage regulations of the nobles and commons respectively.[2]

The study pursued thus far will enable us to understand how there came to be social classes at Rome before the beginning of conquest. But for a long time after the Romans began to annex territory we may seek in vain for a distinction between conquerors and conquered, like that which we find in Laconia. We are forbidden to identify the plebs with the conquered and the patricians with the conquerors by many considerations mentioned above — for instance, by tradition,[3] by the derivation of several patrician gentes from various foreign states,[4] by the fewness of the patricians,[5] and by the fact that the latter show no differentiations of rank, such as we find among the conquering Spartans; they were not a folk but a nobility pure and simple. We are to regard Rome's early annexations of territory and of populations not as subjugations, but as incorporations on terms of equality. The people incorporated were of the same great folk, the Latins, or of a closely related folk, the Sabines. Accordingly they were not reduced to subjection, but were

redeem their lands; Freeman, ibid. iv. 13 f., 36 f. It was only in punishment for later rebellion that they lost their holdings, and some English thanes were never displaced; cf. Powell, in Traill, *Social England*, i. 240.

[1] The most violent and oppressive Germanic invaders are supposed to have been the Vandals, and yet they doubtless retained for the administration of the government the trained Roman officials; Hodgkin, *Italy and her Invaders*, ii. 263. The Ostrogoths were more liberal in their treatment of the Romans (ibid. iv. 250, 271, 282), and the Franks still more liberal; Brunner, *Deutsche Rechtsgesch.* ii. 202.

[2] Featherman, *Social History of the Races of Mankind*, ii. 354; Tarde, *Laws of Imitation*, 238, n. 1, 239; Hellwald, *Kulturgesch.* i. 175 f.; Schurtz, *Urgesch. der Kult.* 149; cf. Demolins, *Comment la route crée le type social.*

[3] P. 16.

[4] P. 37, n. 4.

[5] P. 31; *Pol. Sci. Quart.* xxii (1907). 679 ff.

admitted to citizenship, to the tribes and the curiae, and their nobles were granted the patriciate.[1] Only communities of alien speech, like the Etruscan, or distant Italian communities like the Campanian, were ordinarily given the inferior civitas sine suffragio; and this restricted citizenship does not appear in history before the middle of the fourth century B.C.

The analogies offered in this chapter, by proving that the conditions they illustrate are possible for early Rome, tend to confirm the authority of the sources. By similar comparative study it would be practicable to illustrate in detail and to corroborate the statements of ancient writers as to the organization of the plebs, as well as of the patricians, in tribes and curiae, the participation of the clients and plebeians in war and politics, and the deterioration of the free commons through the strengthening of the nobility — all of which are rejected by eminent modern historians, who merely imagine them incompatible with primitive conditions or with a rational theory of constitutional development. The inquiry has been pursued far enough, however, to indicate that from a comparative-sociological point of view the conception

[1] The idea that the primitive community is essentially illiberal with its membership is erroneous. For the mingling of conquerors and conquered, see p. 42 f. and notes. On the ethnic heterogeneity of states in general, see Gumplowicz, *Rassenkampf*, 181. The laws of Solon granted citizenship to alien residents who were in perpetual exile from their own country, or who had settled with their families in Attica with a view to plying their trade; Plut. *Sol.* 24. Under his laws, too, a valid marriage could be contracted between an Athenian and an alien; Hdt. vi. 130. The Athenians, like the Romans, believed that many of their noble families were of foreign origin. In Ireland "strangers settling in the district, conducting themselves well, and intermarrying with the clan, were after a few generations indistinguishable from it;" Ginnell, *Brehon Laws*, 103. Nearly the same rule holds for South Wales; Seebohm, *Tribal System in Wales*, 131. To the Germans before their settlement within the empire the idea of an exclusive community must have been foreign; for as yet the individual was but loosely attached to his tribe. Persons of many tribes were united in the comitatus of a chief; the two halves of a tribe often fought on opposite sides in war; a tribe often chose its chief from another tribe. Intermarriage among the tribes was common, even between Germans and Sarmatians. A single tribe often split into several independent tribes, and conversely new tribes were formed of the most diverse elements; Seeck, *Geschichte des Untergangs der antiken Welt*, i. 209 with notes; Kaufmann, *Die Germanen der Urzeit*, 136 f. Under these circumstances the primitive German community cannot be described as exclusive. In like manner our sources unanimously testify to the liberality of early Rome in granting the citizenship to strangers. It is no longer possible to oppose to this authority the objection that such generosity does not accord with primitive conditions.

of early Rome handed down to us by the ancients is sound and consistent, and that the method of subjective reconstruction of history introduced by Niebuhr and still extensively employed by scholars is unscientific.

I. Roman Society: Niebuhr, B. G., *Römische Geschichte*, i. 321 ff.; English, 158 ff.; Schwegler, A., *Römische Geschichte*, I. bk. xiv; Wigger, J., *Verteidigung der nieburschen Ansicht über den Ursprung der röm. Plebs;* Peter, C., *Geschichte Roms*, i. 31–3; *Verfassungsgeschichte der röm. Republik; Studien zur röm. Geschichte mit besonderer Beziehung auf Th. Mommsen;* Ihne, W., *History of Rome*, i. 109 ff.; *Early Rome*, ch. ix; *Asylum of Romulus*, in *Classical Museum*, iii (1846). 190–3; *Forschungen auf dem Gebiete der röm. Verfassungsgeschichte* (also translated into English by Heywood); Lange, L., *Röm. Alt.* i. 414 ff., and see indices s. Patres, Plebs, etc.; Mommsen, Th., *History of Rome*, bk. I. chs. v, vi; *Röm. Forschungen*, i. 131–284; *Röm. Staatsrecht*, iii. 127 ff., and see indices s. Patres, Plebs, etc.; *Abriss d. röm. Staatsrechts*, 3 ff.; Herzog, E., *Geschichte und System der röm. Staatsverfassung*, i. 32 ff.; Meyer, E., *Geschichte des Altertums*, ii. 515–7, 521 f.; v. 141–3; *Plebs*, in *Handwörterb. d. Staatswiss.* vi. 98–106; Niese, B., *Grundriss der röm. Geschichte*, 36 f.; Ampère, J. J., *Histoire Romaine à Rome*, i. 440 ff.; ii. 15 ff.; Zöller, M., *Latium und Rom*, 163; Ridgeway, W., *Early Age of Greece*, i. 254 ff.; Oberziner, G., *Origine della plebe Romana;* Conway, R. S., *I due strati di populazione Indo-Europea del Lazio e dell' Italia antica*, in *Rivista di storia antica*, vii (1903). 422–4; Hüllmann, K. D., *Ursprünge der röm. Verfassung durch Vergleichungen erläutert;* Mispoulet, J. B., *Institutions politiques des Romains*, i. 14 ff.; Greenidge, A. H. J., *Roman Public Life*, 4 ff.; Abbott, F. F., *Roman Political Institutions*, 6 ff.; Naudet, M., *De la noblesse et des récompenses d'honneur chez les Romains;* Hoffmann, *Patricische und plebeiische Curien;* Pelham, H., *Roman Curiae*, in (English) *Journal of Philology*, ix (1880). 266–79; Soltau, W., *Altröm. Volksversamml.* 58 ff., 625 ff.; Bernhöft, F., *Staat und Recht der röm. Königsz.* 145 f.; Genz, H., *Das patricische Rom;* Clason, D. O., *Kritische Erörterungen über den röm. Staat;* Fustel de Coulanges, *Ancient City*, bk. iv; Pellegrino, D., *Andeutungen über den ursprünglichen Religionsunterschied der röm. Patricier und Plebeier;* Hennebert, A., *Histoire de la lutte entre les patriciens et les plébeiens à Rome;* Bloch, L., *Die ständischen und sozialen Kämpfe in der röm. Republik;* Wallinder, *De statu plebeiorum romanorum ante primam in montem sacrum secessionem quaestiones;* Neumann, K. J., *Grundherrschaft der röm. Republik, Bauernbefreiung und Entstehung der servianischen Verfassung;* Holzapfel, L., *Die drei ältesten römischen Tribus*, in *Beiträge zur alten Geschichte*, i (1902). 228–55; Heydenreich, E., *Livius und die röm. Plebs*, in *Samml. gemeinverständlicher wissenschaftlicher Vorträge*, xvii (1882). 581–628; Christensen, H., *Die ursprüngliche Bedeutung der Patres*, in *Hermes*, ix (1875). 196–216; Staaf, E., *De origine gentium patriciarum commentatio academica;* Terpstra, D., *Quaestiones literariae de populo*, etc., ch. i; Köhm, J., *Altlateinische Forschungen*, ch. i; Bröcker, L. O., *Untersuchungen über die*

Glaubwürdigkeit der altröm. Verfassungsgeschichte, 3 ff.; Botsford, G. W., *Social Composition of the Primitive Roman Populus*, in *Political Science Quarterly*, xxi (1906). 498–526 (the present chapter is in the main a reproduction of this article); *Some Problems connected with the Roman Gens*, ibid. xxii (1907). 663–92.

II. Comparative View: Achelis, Th., *Moderne Völkerkunde, deren Entwickelung und Aufgaben*, (Stuttgart, 1896) 406 ff.; Ammon, O., *Die Gesellschaftsordnung und ihre natürlichen Grundlagen*, (Jena, 1895) Teil i; D'Arbois de Jubainville, *La civilisation des Celtes et celle de l'épopée Homerique*, (Paris, 1899) ch. ii; Arnd, K., *Die materiellen Grundlagen und sittlichen Forderungen der europäischen Kultur*, (Stuttgart, 1835) 444 f.; Barth, P., *Die Philosophie der Geschichte als Sociologie*, i. (Leipzig, 1897) 382; Bastion, A., *Der Mensch in der Geschichte*, iii. (Leipzig, 1860) 323–38; *Allerlei aus Volks- und Menschenkunde*, ii. (Berlin, 1888) 138–54; *Rechtsverhältnisse bei verschiedenen Völkern der Erde*, (Berlin, 1872) 8 ff.; Bluntschli, J. K., *Theory of the State*, (2d ed. from the 6th German: Oxford 1892) bk. II. chs. vi–xiii; Bordeau, L., *Le problème de la vie: Essai de sociologie générale*, (Paris, 1901) 95; Brunner, H., *Grundzüge der deutschen Rechtsgeschichte*, i (Leipzig, 1901); Bücher, C., *Industrial Evolution*, ch. ix; Buchholz, E., *Homerische Realien*, II. bk. i (Leipzig, 1881); Caspari, O., *Die Urgeschichte der Menschheit*, I. bk. ii. ch. 3 (Leipzig, 1877); Cherbuliez, A. E., *Simples notions de l'ordre social à l'usage de tout le monde*, (Paris, 1881) ch. vi; Combes de Lestrade, *Éléments de sociologie*, (Paris, 1896) bk. vi; Cooley, C. H., *Human Nature and the Social Order*, (New York, 1902) ch. ix (analysis of leadership); Craig, J., *Elements of Political Science*, i. (Edinburgh, 1814) 183–95; Duchesne, L., *La conception du droit et les idées nouvelles*, (Paris, 1902) 36; Demolins, E., *Comment la route crée le type social*, i (Paris); Farrand, L. F., *Basis of American History*, (New York, 1904) see index s. Social organization; Featherman, A., *Social History of the Races of Mankind*, ii. (London, 1888) see indices s. Classes; *Thoughts and Reflections on Modern Society*, (London, 1894) 291–6; Frazer, J. G., *Lectures on the Early History of the Kingship* (New York, 1905); Freeman, E. A., *History of the Norman Conquest of England*, iv (New York, 1873); Frohschammer, J., *Ueber die Organisation und Cultur der Menschlichen Gesellschaft*, (Munich, 1885) 84 f.; Funck-Brentano, Th., *Civilisation et ses lois, morale sociale*, (Paris, 1876) chs. v–viii; Fustel de Coulanges, *Ancient City*, bk. iv; *De l'inégalité du wergeld dans les lois Franques*, in *Revue historique*, ii. (1876) 460–89; Giddings, F. H., *Principles of Sociology*, (New York, 1896) bk. III. chs. iii, iv; Ginnell, L., *Brehon Laws, a Legal Handbook*, (London, 1894) chs. iv, v; Grave, J., *L'individu et la société*, (3d ed. Paris, 1897) ch. ii; Gumplowicz, L., *Rassenkampf* (Innsbruck, 1883); Harris, G., *Civilization considered as a Science*, (new ed. New York, 1873) ch. vii; Hellwald, Fr. von, *Culturgeschichte in ihrer natürlichen Entwickelung bis zur Gegenwart*, 2 vols. (Augsburg, 1876); Hirt, H., *Indogermanen*, 2 vols. (1905, 1907); Hittell, J. S., *History of the Mental Growth of Mankind in Ancient Times*, (New York, 1893) i. 228 f.; ii. 37, 72; Hodgkin, *Italy and her Invaders*, (2d ed. Oxford, 1892, 1896) ii,

iii; Jenks, E., *History of Politics* (London, 1900); Kaufmann, G., *Die Germanen der Urzeit* (Leipzig, 1880); Krauss, F. S., *Sitte und Brauch der Südslaven* (Vienna, 1885); Lepelletier de la Sarthe, *Du système social, ses applications pratiques à l'individu, à la famille, à la société*, (Paris, 1855) i. 329 ff.; Letourneau, Ch., *Sociology based on Ethnography*, (new ed. London, 1893) chs. vi–viii; Maine, H. S., *Lectures on the Early History of Institutions*, (London, 1875) ch. v; Mismer, Ch., *Principes sociologiques*, (2d ed. Paris, 1898) 63 ff.; Müller-Deecke, *Die Etrusker*, 2 vols. (Stuttgart, 1877); Rhys, J. and Brynmor-Jones, *The Welsh People* (New York, 1900); Ridgeway, W., *Early Age of Greece*, i (Cambridge, 1901); Ross, E. A., *Social Control* (New York, 1901); Rossbach, J. J., *Geschichte der Gesellschaft*, 3 vols. (1868); Schrader, O., *Reallexikon der indogermanischen Altertumskunde*, (Strassburg, 1901) 802–19; Schröder, R., *Lehrbuch der deutschen Rechtsgeschichte* (4th ed. Leipzig, 1902); Schurtz, H., *Urgeschichte der Kultur*, (Leipzig, 1900) ch. ii; Seebohm, F., *Tribal System in Wales* (New York, 1895); *Tribal Custom in Anglo-Saxon Law* (New York, 1902); Seeck, O., *Geschichte des Untergangs der antiken Welt*, I. (2d ed. Berlin, 1897) bk. II. chs. i, iv; Seymour, *Life in the Homeric Age*, (New York, 1907) 106 f; Skeat and Blagden, *Pagan Races of the Malay Peninsula*, i (New York, 1906) 494–520; Spencer, H., *Principles of Sociology*, II. (New York, 1883) chs. iv–viii; Tarde, G., *Laws of Imitation*, trans. from the French, (New York, 1903) 233 ff.; Traill, H. D., *Social England*, i (New York, 1901); Tribhovandas, *Hindu Castes*, in *Journal of the Anthropological Society of Bombay*, v (1899–1901). 74–91; Vinogradoff, P., *Growth of the Manor* (New York, 1905); Waitz, Th., *Anthropologie der Naturvölker*, ii. (Leipzig, 1860) 126–67; iii. (1862) 119–28; v. (1870) 112 ff.

CHAPTER III

THE THIRTY-FIVE TRIBES

THAT among the Romans the conception of property first attached to movable objects is attested by the words "pecunia" and "mancipatio."[1] There was probably a period during which the citizens cultivated the lots of arable land assigned them by the state without regarding these holdings as property either public or private. In view of the well-established fact that the gens was a relatively late institution, we should for this remote period exclude the idea of gentile tenure.[2] The land was distributed among the families according to tribes and curiae; and when the idea of ownership extended to the soil, it took the form of family ownership of the ager privatus and state ownership of the public domain.[3]

The condition of tenure anterior to the conception of property in land left little trace of itself in the language and institutions and absolutely none in tradition. The sources declare that family

[1] Gaius i. 120 f.

[2] Mommsen's theory of gentile ownership, adopted by Kubitschek, in Pauly-Wissowa, *Real-Encycl.* i. 790, depends upon his view that the gens was as old as the state; in his opinion it was originally stronger but gradually weakened, whereas the state went through the opposite process; *Röm Staatsr.* iii. 25. But if, as I have elsewhere pointed out (*Pol. Sci. Quart.* xxii. 685 ff.), the gens developed from the family during the decline of the kingship and the rise of aristocracy, the theory of a primitive gentile ownership falls to the ground.

[3] We are not to think of the state as granting a certain district to the tribe, which then parcelled it among the component curiae, etc., for this reason that the tribes and the curiae did not themselves possess common lands. Rather the state divided a given district among the families which were already included, or which it wished to include, in a given curia or tribe. In this way the later tribes were formed in historical time, and in this way the Claudian tribe was originally constituted; Livy ii. 16. 4 f.; cf. Plut. *Popl.* 21. When therefore Dionysius, ii. 7. 4, states that Romulus divided the land into thirty lots and assigned a lot to each of the thirty curiae, he means, if he correctly understands the matter, that land was assigned not to the curia as a whole but to the families which composed the curia, unless indeed the curiae once had a right of landholding not possessed in historical time.

ownership existed in Rome from her foundation as well as in her earliest colonies — a view confirmed by the comparative study of language.[1] Each family, they assume, held two iugera — the heredium[2] — or we may more correctly say, at least two iugera.[3] This small lot has generally been explained[4] as the private landed property of the individual, in contrast with the public land and with the common land of the gens, and thus it is taken as evidence of a condition prior to the extension of private ownership to the arable fields. Should we grant this to be the true explanation, we might still assume that public and gentile tenure had developed into private ownership of arable land long before Servius, or that Servius himself converted the fields into private holdings. For the second alternative we could find apparent support in the sources, which have much to say of the distribution of land among the citizens by Servius.[5] For the continued absence of private ownership after the Servian reforms not even the shadow of an authority can be found.

But the explanation of heredium given above is by no means necessary; in fact the sources regard it not as the only private land, but rather as the smallest share allotted to any citizen, the rich and noble possessing more.[6] While accordingly the wealthy man owned many iugera, the poor man, limited to his heredium, was obliged to earn part of his living by labor as a tenant or as a wage-earner in the field of his rich neighbor;[7] and in the early colonies the bina iugera were granted on the same aristocratic principle. If this is the true explanation of heredium, the

[1] Christ, W., in *Sitzb. d. Berl. Akad. d. Wiss.* 1906. 207.

[2] In the Twelve Tables heredium has the meaning of hortus, "garden;" Pliny, *N. H.* xix. 4. 50. It was a praedium parvulum consisting of two iugera; Fest. ep. 99.

[3] In the earliest colonies this was the amount assigned to each man; cf. Livy iv. 47. 6 (Labici); vi. 16. 6 (Satricum); viii. 21. 11 (Tarracina, founded 329). The first two are not so distinctly historical as the third; Mommsen, *Röm. Staatsr.* iii. 24, n. 1. Supposing Rome to have been a colony, the historians infer that Romulus made a similar distribution among its earliest settlers; cf. Varro, *R. R.* i. 10. 2; Pliny, *N. H.* xviii. 2. 7; Fest. ep. 53; Juvenal xiv. 163 f.; Siculus Flaccus 153; Livy vi. 36 11; Plut. *Popl.* 21; Columella v. 1. 9; Nissen, *Ital. Landesk.* ii. 507.

[4] Cf. Mommsen, *Röm. Staatsr.* iii. 23 f.

[5] Dion. Hal. iv. 13. 1; Varro, *De vit. pop. rom.* i, in Non. Marc. 43; Livy i. 46. 1.

[6] Dion. Hal. v. 57. 3; Plut. *Popl.* 21. Moreover the division into the five classes was based on unequal holdings.

[7] Cf. Meyer, *Gesch. d. Alt.* ii. 518, n.

strongest argument in support of the theory of public ownership at Rome in the late regal period is taken away; we must either abandon the theory or relegate it to a time far anterior to the Servian reforms. Mommsen's assumption[1] that the sixteen oldest rural tribes were instituted some time after the city tribes by the division of gentile lands is untenable on other grounds. The gens which gave its name to the tribe could not have owned all the land in the tribe; for in that case all but the sixteen gentes would have been landless. Again, assuming, as he does, that all the land belonged to the gentes, which he supposes to have been exclusively patrician, we should be forced to conclude that the division left the plebeians landless. And further, if we bear in mind that the gens developed from the family, we must also believe that the undivided gentile land was once a family estate, which according to Roman usage had to be registered in some tribe, even if the land of the gens was not so registered. Mommsen's theory proves therefore not only to be unsupported by the sources but actually unthinkable. In conclusion we may safely say that though some land remained public, and though the gens after it had come into existence owned some common land, individual, or at most family,[2] ownership was in full force in the earliest times of which we have knowledge.

The clearest and most detailed account of the origin of the Servian tribes is given by Dionysius iv. 14. 1 f.: "When Tullius had surrounded the seven hills with one wall, he divided the city into four parts, and giving to the parts the names of the hills — to one Palatina, to another Suburana, to the third Collina, and to the fourth Esquilina — he made the city to consist of four tribes, whereas up to that time it had comprised but three. . . . And he ordained that the men who lived in each of the four parts should not change their abode or give in their census elsewhere. The enlistment of soldiers also and the collection of taxes, which they were to pay individually to the treasury for military and other purposes, were distributed no longer among the three gentile tribes but among the four local tribes instituted by him. . . . [15. 1:] And the whole country

[1] *Röm. Staatsr.* iii. 168.

[2] Dion. Hal. iv. 14. 2 might refer to a condition in which land was still inalienable and the right of changing residence restricted.

he divided, as Fabius says,[1] into twenty-six parts, also called tribes, adding to them the four city tribes; but Venonius is authority for thirty-one rural tribes, which with those of the city would complete the thirty-five of our own time. Cato, however, who is more trustworthy than either of these two, says that all the tribes in the time of Tullius amounted to thirty, though he does not separate the number of parts" (into urban and rural).

A great variety of opinion has arisen regarding the original number of the Servian tribes. Niebuhr[2] believed that Servius created in all thirty, afterward reduced by unfortunate war with the Etruscans to twenty. This view found supporters but was refuted by Huschke.[3] Those who rejected it generally agreed that Servius divided the city into four tribes and the country into districts, regiones, pagi.[4] Mommsen[5] gave a new phase to the theory of the subject by assuming that the four so-called city tribes, which all the sources agree in ascribing to Servius,[6] included the country as well as the city. According to this hypothesis Alba[7] and Ostia,[8] for instance, belonged to the Palatine tribe. His opinion has found wide acceptance.[9]

[1] The text followed is that of Jacoby. The reading represented by Jordan, *Cato*, p. 8, is not satisfactory. We have no ground for impugning the statement of Dionysius that Fabius actually called the country districts phylae, tribes. He may have termed them at once μοῖραι, "regions," and phylae with perfect consistency; cf. Kubitschek, *Rom. trib. or.* 7, n. 34.

[2] *Röm. Gesch.* i. 434–7; English, 205 f. [3] *Verf. d. Serv.* 95 f.

[4] Cf. Huschke, *Verf. d. Serv.* 72 ff., who supposed that the twenty-six rural regiones were in most respects like tribes, but contained only plebeians, who were politically inferior to the city people; see also Schwegler, *Röm. Gesch.* i. 736 f.

[5] *Röm. Tribus*, followed by Grotefend, *Imp. rom. trib. descr.*

[6] The supposition that there were originally but four rests upon those passages which mention only that number in connection with Servius, as Livy 1. 43. 13; Fest. ep. 368; (Aurel. Vict.) *Vir. Ill.* 7. 7; the discussion of the four city tribes as though they were the only Servian tribes by Dionysius (iv. 14. 1), whereas in the next chapter he describes those also of the country; and the designation of the rural districts as regiones rather than tribes by Varro, *De vit. pop. rom.* i, in Non. Marc. 43: "Et extra urbem in regiones xxvi agros viritim liberis attribuit." In *L. L.* v. 56, however, he calls the country districts tribes. [7] Grotefend, ibid. 27.

[8] Inferred from an obscure passage in Fest. 213. 13, and from inscriptions cited by Mommsen, *Röm. Trib.* 215; Grotefend, ibid. 67.

[9] Lange, *Röm. Alt.* i. 504; Herzog, *Röm. Staatsverf.* i. 39 and n. 2; Pelham, *Rom. Hist.* 39; Soltau, *Altröm. Volksversamml.* 457 ff.; Greenidge, *Rom. Pub. Life*, 67.

Afterward changing his mind, he asserted that the four urban tribes were confined within the pomerium — a view which now seems to be established beyond doubt.[1] With this final position of Mommsen the creation of theories as to the number and limitations of the Servian tribes has not been exhausted; for against the view that Servius instituted only the four urban tribes may be placed that of Pais,[2] who assigns their origin to the censors of the year 304. The theory of Pais implies that the sixteen rural tribes which bore gentile names were far older than the four urban tribes.

Light will be thrown on this obscure subject by an inquiry into the relation of the sources to one another. It seems certain that Fabius derived his information concerning the tribes and the entire centuriate organization from the "discriptio centuriarum" — a document in the censors' office. Though ascribed to Servius Tullius as author,[3] it set forth the centuriate system as it existed in reality before the reform — that is in the time of the first war with Carthage.[4] It was this late form of the centuriate organization which Fabius had in mind. He must have been prevented, however, from ascribing to Servius the institution of all the thirty-three tribes then existing, by the recollection that two tribes were added as recently as 299 from territory too far from Rome to have formed a part of her domain under Servius; and perhaps the curiate organization led him to favor the number thirty. He made Servius the author of thirty tribes, accordingly, in spite of the fact that this number was not reached till 318. His error is not more absurd

[1] *Röm. Staatsr.* iii. 163 ff. Mommsen calls attention to epigraphic evidence, cited more fully by Kubitschek, *Imp. rom. trib. discr.* 26 f., which assigns Ostia unmistakably to the Voturia tribus. He notices further that the same sort of evidence which places Ostia in the Palatina would give Puteoli, Sutrium, Canusium, and Fundi to the same city tribe, which is impossible. The error of including Alba and Ostia in the Palatina is due to neglect of the fact that men excluded from the country tribes were assigned to those of the city irrespective of domicile; cf. *Röm. Staatsr.* iii. 442 f., with notes.

[2] *Stor. di Rom.* I. i. 320, n. 1, relying on Livy ix. 46. 14.

[3] Fest. 246. 30: "'Pro censu classis iuniorum' Ser. Tullius cum dixerit in descriptione centuriarum;" cf. 249. 1; Livy 1. 60. 4; iv. 4. 2. Cicero, *Rep.* ii. 22. 39, writes discriptio, which Lange, *Röm. Alt.* i. 464, following Bücheler, in *Rhein. Mus.* xiii (1858). 598, accepts as the correct form.

[4] P. 67.

than the ascription to Servius of the whole centuriate organization as it stood at the opening of the First Punic War, or the assumption that in the first Servian census were enrolled eighty thousand men fit for military service.[1] Cato, who also states the original number as thirty, without separating them into rural and urban,[2] may have been influenced by Fabius, though it is likely that he drew from the same source. Vennonius in making Servius the author of all thirty-five tribes but slightly exceeds the absurdity of earlier writers.[3] Evidently Fabius and Cato were the sources for all future annalists. While depending on them, Varro seems to have noticed the error of ascribing twenty-six rural tribes to Servius, as there were but seventeen of this class before 387. To avoid the difficulty and at the same time to retain the Fabian number, he supposed that the country districts of Servius were not yet tribes but the regiones from which the tribes were afterward formed[4] — a superficial explanation in the true Varronian style.[5] Following Varro, however, later authorities generally speak of the four urban tribes of Servius without mentioning those of the country.[6] So Dionysius, after referring to the four city tribes, proceeds to describe their character and functions, as though these were all the tribes then existing.[7] Thus far he depends upon Varro. Fortunately, however, he gained from Fabius the information that there were also twenty-six rural tribes, his description of which[8] is slightly troubled by the

[1] Fabius Pictor, in Livy 1. 44. 2. Altogether unnecessary therefore is Soltau's supposition (*Altröm. Volksversamml.* 458, n. 2), in itself improbable, that Fabius, who wrote his annals in Greek, applied the word φυλαί incorrectly to the rural districts. However that may be, Cato, as good an authority, spoke of these same districts as tribes. If the number thirty was suggested to Fabius by the curiate organization (cf. Ullrich, *Centuriatcomitien*, 9), this circumstance would be no argument against the existence of country tribes. On the strength of the army in the early republic, see p. 83.

[2] P. 57.

[3] Ibid.; cf. Pais, *Leg. of Rom. Hist.* 140.

[4] Just as he supposed the Suburana to have been evolved, name and all, from the pagus Succusanus; *L. L.* v. 48; cf. Fest. 302. 15; ep. 115.

[5] Varro, *De vit. pop. rom.* i, in Non. Marc. 43: "Et extra urbem in regiones xxvi agros viritim liberis attribuit." As this statement does not rest upon an independent source, but is merely an interpretation of Fabius and Cato, it has not the value which Huschke (*Verf. d. Serv.* 72 f., 85 f.), Mommsen (*Röm. Staatsr.* iii. 168 f.), and Meyer (in *Hermes*, xxx. 11) attach to it.

[6] Cf. Livy i. 43. 13; Fest. ep. 368.

[7] IV. 14.

[8] Dion. Hal. iv. 15.

Varronian notion that these country districts were not so much tribes as regiones, πάγοι, but which served all the purposes of tribes including the taking of the census.[1]

The various contradictory statements of the ancients regarding the original number of Servian tribes can now be appreciated at their respective values. In the course of the discussion it has become evident, too, that Fabius and Cato, the sources of later annalists, had no tenable ground for their assumption of thirty original tribes. Had they examined the records, perhaps the succeeding parts of their own chronicles, they would have found that before 387 there could have been only twenty-one tribes in all.[2] A less certain indication of the admission of one or possibly two tribes still earlier in the republic may have existed;[3] but here we reach the extreme limit of their knowledge. Any investigation of the number in the regal period, whether by the ancients or by the moderns, must rest not upon contemporary records but upon inference pure and simple. We may inquire, accordingly, whether the view of Mommsen[4] and Meyer[5] that the four city tribes were created first and existed for a time before the institution of the rural tribes, having no trustworthy foundation in the sources, can be deduced from our knowledge of the general conditions of the time. We must by all means avoid the supposition of Mommsen[6] that in the time of Servius there was no private property in land outside of the city.[7] If then we bear in mind two points which Mommsen has himself established, (1) that the local tribe was an aggregate of private estates,[8] (2) that the four urban tribes of Servius were limited to the city,[9] we must conclude that in the time of Servius the country estates were registered in rural tribes — in other

[1] Dion. Hal. iv. 15. 4–6. His idea of a census of the country people he derived from Lucius Piso (§ 5 f.) and from the censors' office through Fabius (22. 2) — a fact which militates against Mommsen's theory that under Servius the country was not yet ager privatus.

[2] Livy vi. 5. 8. [3] P. 56. [4] *Röm. Staatsr.* iii. 162 ff.

[5] *Gesch. d. Alt.* v. 135, 142; *Hermes*, xxx. 11; accepted by Neumann, *Grundherrsch. d. röm. Rep.* 14 f.; Kornemann, in *Klio*, v. 90.

[6] *Röm. Staatsr.* iii. 168.

[7] P. 50.

[8] *Röm. Staatsr.* iii. 164 f.

[9] Ibid. 163 and n. 3, in opposition to his former view and that of Grotefend; cf. p. 52.

words that Servius instituted rural as well as urban tribes.[1] The view of Meyer that all the citizens lived in the city and the dependents in the country[2] — which would afford a ground for assuming the urban tribes to have been earlier than the rural — has no basis either in institutions or in tradition. If originally the country was all-important,[3] and if at the dawn of history we find the country and city politically equal, as is actually the case, we have no motive for the insertion of an intermediate stage in which the city was all-important. There was indeed a tendency toward the concentration of political power within the city, but it did not advance beyond the equalization of city and country.[4] To maintain Meyer's view we should be obliged to complicate the early history of Rome with two revolutions — one by which the city gained supremacy over the country, and the other in which the supremacy was lost. It is mainly to defend the early history of the comitia, and of the constitution in general, against this complication that the

[1] There might remain the conjecture that the regiones, or pagi, had the same constitution as the tribes, but in that case the difference between pagus and tribus would be one of name only, and would therefore be without historical significance. Meyer's view (*Gesch. d. Alt.* v. 135, 142) that the sixteen earliest country tribes were not formed till after the institution of the plebeian tribunate depends partly on his notion that the tribunes were originally the heads of the four urban tribes and partly on the difference in the naming, the city tribes being named after localities and the country tribes after gentes; cf. *Hermes*, xxx. 11. The latter circumstance, he asserts, establishes a later origin for the rural tribes. This argument is by no means convincing; the difference may have arisen from different conditions in country and city; probably no urban ward had one patrician gens so predominant as to give its name. If one kind of name is earlier than another, we should naturally suppose the gentile name to be the earlier, and in that case we should prefer the view of Pais, *Stor. di Rom.* I. i. 320, n. 1; *Leg. of Rom. Hist.* 140; cf. above, p. 52, n. 2.

The patrician gentile name does not imply patrician domination any more than the eupatrid name of an Attic deme implies eupatrid domination of that deme.

[2] *Hermes*, xxx. 12; followed by Neumann, *Grundherrsch. d. röm. Rep.* 13 f.; Kornemann, in *Klio*, v. 90 f.

[3] P. 6.

[4] Among the scholars who insist that originally country as well as city was divided into tribes are Müller, J. J., in *Philol.* xxxiv (1876). 112 ff., and more recently Kubitschek, *De trib. or.* (1882); *Imp. rom. trib. discr.* (1889), 2. Beloch, *Ital. Bund* (1880), 28, begins with twenty-one tribes in 495, considering it impossible to penetrate earlier conditions. Niese, *Röm. Gesch.* (1906). 38 and n. 3, more positively assigns the creation of twenty-one tribes to that date.

present discussion of the early land tenure and of the origin of the Servian tribes is offered.

The original number of tribes, as has been stated, is unknown. It was increased by the acquisition of territory. Possibly the annalists found an obscure trace of the admission of the sixteenth rural tribe — the Claudia — in 504. To that year Livy assigns the coming of Attius Clausus with his host of clients, who were formed into the Claudian tribe.[1] Wissowa[2] suggests that the immigration of the Claudian gens, the date of which did not appear in the original tradition,[3] was arbitrarily assigned to the year in which was recorded the admission of the tribe. This conjecture is supported by the situation of the Claudia, which would place it among the latest of the twenty.

With more confidence we may assign the admission of the seventeenth rural tribe — the twenty-first in the entire list — to 495.[4] It must have been the Clustumina.[5] We are certain that

[1] Livy ii. 16. 5; cf. Dion. Hal. v. 40. 5.

[2] In Pauly-Wissowa, *Real-Encycl.* iii. 2650.

[3] Some place the immigration in the time of Titus Tatius; Verg. *Aen.* vii. 706 ff.; Suet. *Tib.* 1; Appian, *Reg.* 12; Mommsen, *Röm. Forsch.* i. 293; *Röm. Staatsr.* iii. 26, n. 1. That the earlier tradition assigned the event to the date mentioned in the text is asserted by Münzer, in Pauly-Wissowa, ibid. iii. 2663.

[4] Livy ii. 21. 7 (495): "Romae tribus una et xxx factae." This statement is not that thirty-one tribes were instituted in that year, but that the number thirty-one was reached, "factae" being copulative. If "una et xxx" is not a copyist's error, it probably depends on the Fabian view that there were originally thirty tribes. At all events it is inconsistent with the later statement (vi. 5. 8) that the number twenty-five was not reached till 387. The epitomator of Livy accordingly corrected the number to twenty-one, which most editors now write in the text itself. That there were twenty-one tribes in 491, when Coriolanus was tried, is assumed too by Dion. Hal. vii. 64. 6: Μιᾶς γὰρ καὶ εἴκοσι τότε φυλῶν οὐσῶν, οἷς ἡ ψῆφος ἀνεδόθη, τὰς ἀπολυούσας φυλὰς ἔσχεν ὁ Μάρκιος ἐννέα· ὥστ' εἰ δύο προσῆλθον αὐτῷ φυλαί, διὰ τὴν ἰσοψηφίαν ἀπελέλυτ' ἄν, ὥσπερ ὁ νόμος ἠξίου ("There being at the time twenty-one tribes, to whom the vote was given, Marcius received the votes of nine tribes for acquittal; so that, had two more tribes been favorable, he would have been acquitted by an equality of votes, as the law required"). This is not a mistake, as many assume, but an understatement; cf. Muller, J. J., in *Philol.* xxxiv (1876). 110 f. Meyer's explanation (*Hermes*, xxx. 10, n. 2), which makes διὰ τὴν ἰσοψηφίαν signify "owing to the equal value of the votes," is improbable and unnecessary.

[5] For the form of the word, see Mommsen, *Röm. Staatsr.* iii. 171; Kubitschek, in Pauly-Wissowa, *Real-Encycl.* iv. 117. Crustumeria had been taken four years earlier (Livy ii. 19. 2, 499); so that a tribe of the same name could have been admitted in 495.

there were only twenty-one till 387, when four new tribes were formed, bringing the number up to twenty-five.[1] The twenty-sixth and twenty-seventh were admitted in 358,[2] the twenty-eighth and twenty-ninth in 332,[3] the thirtieth and thirty-first in 318,[4] the thirty-second and thirty-third in 300,[5] the thirty-fourth and thirty-fifth in 241.[6] To the year 90 that number is known to have remained unchanged, and the evidence of a temporary increase during the Social War is obscure. On this point Appian[7] states that "the Romans did not enroll the newly admitted citizens in the existing thirty-five tribes for fear that, being more numerous, they might outvote the old citizens in the comitia; but by dividing them into ten parts (?) they made new tribes, in which the new citizens voted last." This view of an increase in number is confirmed by a statement of Sisenna[8] as to the creation of two new tribes at about that time. Velleius[9] however informs us that the new citizens were enrolled in eight tribes. In the object of the arrangement he agrees with Appian. Next he mentions the promise of Cinna to enroll the Italians in all the tribes. From the connection we should naturally infer that in the opinion of Velleius the new citizens were enrolled before Cinna in eight old tribes; and yet it is difficult to understand how the assembly could be persuaded to visit any group of rural tribes with this disgrace and political disability.[10] As the authority of Sisenna, if not that of Appian, compels us to accept the fact of new tribes, it is better to inter-

[1] Livy vi. 5. 8.

[2] Ibid. viii. 15. 12.

[3] Ibid. ix. 20. 6.

[4] Ibid. ep. xix.

[5] Ibid. x. 9. 14.

[6] Ibid. ep. xix.

[7] *B.C.* i. 49. 214: Ῥωμαῖοι μὲν δὴ τούσδε τοὺς νεοπολίτας οὐκ ἐς τὰς πέντε καὶ τριάκοντα φυλὰς, αἳ τότε ἦσαν αὐτοῖς, κατέλεξαν, ἵνα μὴ τῶν ἀρχαίων πλέονες ὄντες ἐν ταῖς χειροτονίαις ἐπικρατοῖεν, ἀλλὰ δεκατεύοντες ἀπέφηναν ἑτέρας, ἐν αἷς ἐχειροτόνουν ἔσχατοι. For δεκατεύοντες scholars have attempted to substitute δέκα, δέκα πέντε, δέκα ἐνεδρεύοντες (Mendelssohn, *App.* ii. p. 53, n.). The meaning given in the rendering offered above, though not found elsewhere, is possible. The passage has reference to the Latins and faithful Italians admitted by the Julian law of 90.

[8] III. 17 (Peter, *Reliquiae*, i. 280): "L. Calpurnius Piso ex senati consulto duas novas tribus."

[9] II. 20. 2.

[10] Kubitschek, *Imp. rom. trib. discr.* 2–6, tries to prove that the lex Iulia, 90, provided for the enrolment of the Latins and faithful allies in fifteen old rural tribes, and that the lex Plautia Papiria, 89, assigned the more obstinate rebels to eight other existing rural tribes.

pret Velleius in that light.[1] We may suppose then that the eight tribes which he mentions were provided for by the Julian law of 90; and we must accept the statement of Sisenna that in 89 the Calpurnian law "ex senati consulto" created two other new tribes, in which were to be enrolled the citizens admitted under this law. Thus we could account for the ten (?) new tribes mentioned by Appian. As regards the Lucanians and the Samnites, who held out obstinately against Rome, the same historian[2] states that they were respectively enrolled in tribes, as in the former instances. He does not inform us, however, that for this purpose other new tribes were instituted. At all events there seems to be no essential disagreement among our sources; and we have no reasonable ground for doubting an increase, though we may remain uncertain as to the number added.[3]

The arrangement was only temporary. In 88 Sulpicius, tribune of the plebs, carried a law containing a provision for the distribution of the new citizens and the libertini among all the thirty-five tribes.[4] His plebiscite was annulled by the senate on the ground that it had been passed by violence;[5] but the provisions contained in it were afterward legalized by a senatus consultum, and it was finally carried into effect by Cinna as consul in 84.[6] This settlement of the question was approved by Sulla[7] for all the Italians excepting the Marsians and the Paelignians, who were enrolled in one tribe — the Sergia.[8]

The nature of the tribes may be inferred from their object. The intention of the organizer was to introduce the Greek military system, comprising heavy and light infantry, in which the kind of service to be performed depended upon financial

[1] Cf. Madvig, *Röm. Staat.* i. 26 f.

[2] *B. C.* i. 53. 231.

[3] That there was an increase is held by Mommsen, *Röm. Staatsr.* iii. 179, n. 1; Drumann-Gröbe, *Röm. Gesch.* ii. 370. This view is favored by Long, *Rom. Rep.* ii. 199 f. Lange, *Röm. Alt.* iii. 111 f., compromises.

[4] Livy, ep. lxxvii; App. *B. C.* i. 55. 242; p. 404.

[5] App. *B. C.* i. 59. 268; Cic. *Phil.* viii. 2. 7.

[6] Vell. ii. 20. 2; Livy, ep. lxxxiv; App. *B. C.* i. 64. 287; Cic. ibid.; Exup. 4; Mommsen, *Röm. Staatsr.* iii. 180, 439.

[7] Livy, ep. lxxxvi.

[8] Mommsen, ibid. 180.

ability to provide equipments.[1] Seeing that a classification of citizens with respect to property was necessary for this purpose, Servius instituted the tribes as a basis for the census. That they contained the ager privatus only is indicated by the exclusion from them of the Capitoline and Aventine hills.[2] Their local character is established by the concurrent testimony of ancient writers.[3] Yet even in the beginning they could but roughly be described as districts, for they excluded all public land and all waters and waste places claimed neither by individuals nor by the government. They retained the approximate character of districts so long only as the territory of annexed communities continued to be formed into new tribes. The process came to an end in 241 ; and it was as early at least as this date that the Roman colonies, not originally in the tribes, were incorporated in them.[4] Thereafter the annexation of new territory tended more and more to render the tribes geographically indeterminate.[5] The process was far advanced by the admission (90–84) of the Latins and Italians with their lands to the existing tribes,[6] which were further enlarged in the imperial period by the incorporation of provincial communities.[7] As consisting of lands, though no longer necessarily adjacent, they were still considered local.[8]

The tribe was also a group of persons; in fact the word applies far more frequently to persons than to territory.[9] During

[1] P. 71. Their military purpose is recognized by Dion. Hal. iv. 14. 2, whereas Livy, i. 43. 13, connects with them nothing but the collection of taxes.

[2] Livy i. 43. 13; Pliny, *N. H.* xviii. 3. 13; Varro, *L. L.* v. 45; Mommsen, *Röm. Staatsr.* iii. 166, n. 1.

[3] Dion. Hal. iv. 14. 2; Laelius Felix, in Gell. xv. 27. 5; Flaccus, in Gell. xvii. 7. 5. In referring to the year 204 Livy, xxix. 37. 3 f., represents the tribes as districts. The Pupinian tribe is often spoken of as a district, as by Varro, *R. R.* i. 9. 5. On the local nature of the urban tribes, see Varro, *L. L.* v. 56; Livy i. 43. 13; Dion. Hal. iv. 14. 1.

[4] Kubitschek, *Rom. trib. or.* 24 f.; *Imp. rom. trib. discr.* 2.

[5] Cf. Grotefend, *Imp. rom. trib. descr.* 7.

[6] Kubitschek, *Imp. rom. trib. discr.* 2 f.

[7] Cic. *Flac.* 32. 79 f. On the growth of the tribe, see Mommsen, *Röm. Staatsr.* iii. 175 ff.; Kubitschek, ibid. See also the maps in the latter work.

[8] Flaccus, in Gell. xvii. 7. 5. A list was kept of the estates comprising a tribe; Cic. ibid.

[9] Cf. the admission of new tribes; Livy vi. 5. 8: "Tribus quattuor ex novis civibus additae ;" viii. 17. 11.

the early republic a considerable degree of harmony was maintained between the two aspects of the institution (1) possibly by a restriction on the transfer of residence,[1] (2) by the change in membership from tribe to tribe, through the censors, on the basis of a transfer of domicile, (3) by the assignment of new citizens to the tribe in or near which they had their homes, (4) by the creation of new tribes for new citizens who did not live in or near the existing tribes. This harmony experienced its first serious disturbance through the enrolment of the landless, irrespective of domicile, in the urban tribes in 304,[2] but continued to such a degree that a hundred years later the rural voters generally still resided in their own tribes.[3] In the last century of the republic the personal tribe, emancipated from the local, depended solely on inheritance and the will of the censors.[4]

The original composition of the personal tribe is determined by its purely military object. It comprised accordingly those only who were liable to service in war. From the early Roman point of view those citizens were qualified who found their livelihood in agriculture.[5] Not all landowners were enrolled in the tribes; for Latin residents,[6] freedmen,[7] widows and orphans,[8] all of whom might possess land, lacked membership. Those proprietors, too, were excluded whom the censors assigned to the aerarii as a punishment. Tribesmen were all

[1] Dion. Hal. iv. 14. 2.

[2] P. 64.

[3] Livy xxix. 37. 3 f.; Soltau, *Altröm. Volksversamml.* 379, n. 3.

[4] Somewhat different is the view of Mommsen, *Röm. Trib.* 2 f.; *Röm. Forsch.* i. 151; *Röm. Staatsr.* ii. 402; controverted by Soltau, ibid. 384 ff.

[5] The Romans had but two pursuits, agriculture and war, for the sedentary occupations were given to slaves and strangers; Dion. Hal. ii. 28; ix. 25. 2. It was assumed that those who were without property could take no interest in the state; ibid. iv. 9. 3 f.; Livy viii. 20. 4.

[6] Cf. Mommsen, *Röm. Staatsr.* iii. 630.

[7] It is well known too that freedmen were not regularly employed in military service; Livy x. 21. 4; p. 354 f. below.

[8] Widows and orphans were enrolled in a different list from that of the tribes, and hence were not included in the statistics of population which have come down to us; cf. Livy iii. 3. 9; ep. lix; Plut. *Popl.* 12; Mommsen, *Röm. Staatsr.* ii. 365 f., 401. Livy, ii. 56. 3, seems to exclude the clients. Only those lacked membership, however, who possessed no land. Clients of free birth were as liable to military service, according to their ratable property, as any other class of citizens; p. 22.

the other landowners — adsidui [1] et locupletes [2] — together with the male descendants of military age under their potestas.[3]

Another object of the tribes, referred to Servius by our sources, was the collection of taxes.[4] We know that they afterward served this purpose; and the ancient writers, who could have had no direct knowledge of the intentions of Servius but who assigned to him without hesitation all the later developments of his organization, were in this case especially misled by their false derivation of tributum from tribus or *vice versa*.[5] A brief study of the facts in the case will prove their inference to be wrong. The most obvious consideration is that had Servius intended the tribes for the levy of taxes as well as for military purposes, he would have included all who were subject to taxation as well as all who were liable to service in the army, whereas in fact he admitted those only who were to serve. It is to be noted that primitive Rome imposed no regular direct taxes on the citizens in general. Every man equipped himself for war even after the introduction of the phalanx;[6]

[1] Law of the Twelve Tables, in Gell. xvi. 10. 5; Schöll, *Leg. Duod. Tab. Rel.* 116; Bruns, *Font. iur.* 18 f.; Cic. *Rosc. Am.* 18. 51; *Att.* iv. 8 a. 3; Fest. ep. 9; Charis. p. 75 (Keil). The derivation from ab asse dando proposed by Aelius Stilo, though absurd, was accepted by Cic. *Rep.* ii. 22. 40; *Top.* 2. 10; Fest. ep. 9 (as an alternative); Isid. *Etym.* x. 27; Quint. *Inst.* v. 10. 55. The derivation ab assidendo is nearer the truth; Vaničcek, *Griech.-lat. Wörterb.* 1012; Lange, *Röm. Alt.* i. 466; Mommsen, *Röm. Staatsr.* iii. 237 f.; Kubitschek, in Pauly-Wissowa, *Real-Encycl.* i. 426. See also Varro, *De vit. pop. rom.* i, in Non. Marc. 67; Gell. xix. 8. 15.

[2] Cic. *Rep.* ii. 9. 16; 22. 40; P. Nigidius, in Gell. x. 5. 2; Fest. ep. 9, 119; Pliny, *N. H.* xviii. 3. 11; Quint. v. 10. 55; Ovid, *Fast.* v. 281; Vaničcek, ibid. 506, 1149.

[3] The army in the field must have consisted largely of men in patris aut avi potestate, whose names were reported to the censors, not for taxation but for military service, by those who had authority over them; cf. Livy xxiv. 11. 7; xliii. 14; Dion. Hal. ix. 36. 3; Fest. ep. 66. Scipio's complaint (Gell. v. 19. 16: "In alia tribu patrem, in alia filium suffragium ferre") indicates that the sons were regularly enrolled in the tribe of the father. That the list comprised plebeians only (Niebuhr, *Röm. Gesch.* i. 457 f.) has proved untenable; Mommsen, *Röm. Forsch.* i. 153 f.

[4] Dion. Hal. iv. 14. 2; Livy i. 43. 14; Varro, *L. L.* v. 181.

[5] Livy, ibid.; Varro, ibid.; cf. p. 63, n. 4 below.

[6] Dion. Hal. iv. 19. 3; Fest. ep. 9; Ennius, in Gell. xvi. 10. 1; cf. 12 f. Before the introduction of pay for military service in 406 the soldiers bore their own expenses; Livy iv. 59. 11; v. 4. 5; viii. 8. 3; Flor. i. 6. 8; Diod. xiv. 16. 5; Lyd. *De mag.* i. 45 f.; p. 71 ff. below.

doubtless at first the knights provided their own horses;[1] and in short campaigns the soldiers carried their provisions from their own farms.[2] Fortifications and public buildings were erected by forced task-work. The king supported himself partly by gifts from his subjects and partly from the public property, including land.[3] Other early sources of revenue were tolls levied for the use of harbors, boundaries, temples, bridges, roads, sewers, and salt works.[4] In time the idea arose, too, that the person who did not perform military service should help with his property in the defence of the country. The estates of widows and orphans were accordingly taxed to support the horses of the knights.[5] Those men, also, who were exempt from service because they possessed no land[6] and yet had other property were required to pay on it a regular tax. From this connection with the public treasury (aerarium) they were termed aerarii. This class comprised shopkeepers and merchants. Sometimes the censors assigned to it as a punishment men who owned land. The fact that such persons were at the same time removed from their tribes is sufficient proof that the aerarii were originally outside these associations.[7] The cives sine suffragio, or Caerites, after this class had come into existence in 353, were like the aerarii in (1) that they did not belong to the tribes, (2) that they paid a regular tax, (3) that men were placed on their list as a punishment. They may accordingly be regarded as a special class of aerarii, enrolled as

[1] Plutarch, *Cam.* 2, makes Camillus the author of the tax on orphans for the support of the knights' horses, thus connecting this measure with the general introduction of pay — a statement of some importance notwithstanding Kubitschek, in Pauly-Wissowa, *Real-Encycl.* i. 683.

[2] Zon. vii. 20: Οἰκόσιτοι ἐστρατεύοντο.

[3] Cic. *Rep.* v. 2. 3.

[4] Marquardt, *Röm. Staatsv.* ii. 150 f., 159 f. with citations.

[5] Cic. *Rep.* ii. 20. 36; Livy i. 43. 9; Plut. *Cam.* 2.

[6] Lange, *Röm. Alt.* i. 469, is of the opinion that before Servius all the plebeians had this standing, and that Servius left the newly conquered plebeians in that class, because if admitted to the army, they might revolt! Cf. Herzog, *Röm. Staatsverf.* i. 95.

[7] On the meaning of the word, see Pseud. Ascon. 103: "Ut pro capite suo tributi nomine aera praeberet." On the removal from the tribe into this class; Livy iv. 24. 7; xxiv. 18. 6, 8; 43. 3; xliv. 16. 8. The removal from the tribe is understood when it is not mentioned; Varro, in Non. Marc. 190; Livy ix. 34. 9; xxvii. 11. 15; Gell. iv. 12.

they were in a distinct list.[1] Whereas the cives sine suffragio either wholly lacked the franchise, as the phrase implies, or at most had but the right of the Latins,[2] the other aerarii must have voted in the proletarian century.[3]

The ordinary taxes sufficed for the usual light expenses; but in case of especial need an extraordinary tax was imposed upon the citizens. It was called tributum from tribuere, "to apportion," because it was distributed among the citizens in proportion to their ratable property.[4] We hear of such a tax levied for ransoming the city from the Gauls[5] and another for the building of a wall;[6] but the most common use was for the payment of soldiers, hence the tributum was thought of primarily as a war tax.[7] For this reason tributum came to be correlative with stipendium.[8] It was not often imposed before the introduction of pay in 406.[9] Even then it was not levied every year; it was sometimes refunded when the condition of the treasury permitted; and it fell into disuse after 167.[10] As it was imposed

[1] Livy vii. 20. 7; Dio Cass. Frag. 33; Strabo v. 2. 3; Gell. xvi. 13. 7; Schol. Hor. *Ep.* i. 6. 62. On the aerarii and Caerites, see further Mommsen, *Röm. Staatsr.* ii. 392–4, 401 ff., 406; Kubitschek, in Pauly-Wissowa, *Real-Encycl.* i. 674–6; iii. 1284 f.; Hülsen, ibid. iii. 1281 f.; see also the works of Herzog, Lange, Madvig, and Willems.

[2] P. 466, n. 2.

[3] It would be absurd to suppose that while the absolutely poor citizens could vote in the proletarian century, those who possessed considerable wealth, though not in land, were excluded.

[4] Unutterable confusion was brought into this subject by Varro, *L. L.* v. 181: "Tributum dictum a tribubus, quod ea pecunia, quae populo imperata erat, tributim a singulis pro portione census exigebatur;" cf. Livy i. 43. 13; Isid. *Etym.* xvi. 18. 7. Neither is tributum derived from tribus nor *vice versa*. Tribuere signifies "to divide," "to apportion;" tributum, "that which is apportioned," tribus being only indirectly connected with these words; Schlossmann, in *Archiv f. lat. Lexicog.* xiv (1905). 25–40.

[5] Livy vi. 14. 12.

[6] Ibid. 32. 1.

[7] Dion. Hal. v. 20; cf. iv. 11. 2; xi. 63. 2; Plut. *Popl.* 12.

[8] Livy ii. 9. 6; xxiii. 48. 8; xxxiii. 42. 4; xxxix. 7. 5; Pliny, *N. H.* xxxiv. 6. 23; Marquardt, *Röm. Staatsv.* ii. 162, n. 4.

[9] Instances of public expenditure for the equipment or pay of troops before this date (Dion. Hal. v. 47. 1; viii. 68. 3; ix. 59. 4; Livy iv. 36. 2) are either exceptional or more probably historical anticipations of later usage. That before 406 the soldiers drew pay from their tribes (Mommsen, *Röm. Trib.* 32; Lange, *Röm. Alt.* i. 540) is disproved by Soltau, *Altröm Volksversamml.* 407 f.

[10] Marquardt, ibid. 164–7.

on those only who were liable to military duty,[1] the tribe lists were followed in its collection, and in this sense we may say that it was collected tributim.[2] The work was done by state functionaries, as the tribe, so far as we know, had neither fiscal officers[3] nor a treasury; and possessing no property, it could not be held financially responsible.

An epoch in the history of the tribes was made in 312 by Appius Claudius Caecus the censor, who enrolled the landless citizens, proletarians as well as aerarii, in the existing thirty-three tribes without discrimination.[4] Cives sine suffragio were alone excepted.[5] By giving the landless the upper hand in the assemblies this measure roused the animosity of the proprietors, and thus endangered the peace of the state. In order to soothe the excited feelings of the better class, Q. Fabius Rullianus, censor in 304, supported by his colleague Decius, removed the landless from the rural tribes; but not to deprive them wholly of tribal privileges, he registered them in the four urban tribes. Hence his measure is spoken of as a compromise. Thereafter the landholding and hence more respectable citizens were preferably enrolled in the rural tribes,[6] whereas the landless were confined to those of the city.[7] It was a permanent gain that henceforth tribal membership was a test of perfect citizenship. The censors still had the power to transfer a man from one tribe to another, for instance, from a rural to an urban tribe; but they could not exclude him wholly from the tribes,

[1] Cf. Mommsen, *Röm. Staatsr.* ii. 392. [2] Varro, *L. L.* v. 181.

[3] The function of the tribuni aerarii was to pay the soldiers; Cato, *Epist. Quaest.* I, in Gell. vi (vii). 10. 2; Varro, v. 181; Fest. ep. 2; Pliny, *N. H.* xxxiv. 1. 1. Perhaps they also collected money into the treasury; Cic. *Att.* i. 16. 3. From Cato's statement they appear to have been financially responsible; and we are informed that as early as 100 they constituted a rank (ordo) evidently next below the equites; Cic. *Rab. Perd.* 9. 27. Under the Aurelian law of 70 they made up a decury of jurors; Cic. *Att.* i. 16. 3; Pliny, *N. H.* xxxiii. 1. 31. From these facts it is clear that the aerarian tribunes were officers of the aerarium, but no connection with the tribes can be discovered; Soltau, *Altröm. Volksversamml.* 409–12.

[4] Diod. xx. 46; Livy ix. 46. 10 f.; cf. Mommsen, *Röm. Staatsr.* ii. 403.

[5] Mommsen, ibid. This class came to an end in the Social War; Kubitschek, in Pauly-Wissowa, *Real-Encycl.* iii. 1285.

[6] In Mommsen's opinion (*Röm. Staatsr.* ii. 403) these censors transferred to the country tribes as many landholding members of the urban tribes as possible.

[7] Livy ix. 46. 13 f.

for that would be tantamount to depriving him of the citizenship.[1] There were still aerarii; individuals and sometimes large groups of citizens were still assigned as a punishment to this class, which, however, was henceforth included in the tribes of the city.[2] Although the ordinary urban tribesmen were usually exempt from military duty, the aerarii were required to serve, at times under especially hard conditions,[3] and were not disqualified for office.[4] In registering them in the tribes Claudius made them, like the landowners, liable to military service and to the tributum according to their means. To effect this object he necessarily assessed their personal property on a money valuation; and in order to treat all tribesmen alike, he must have changed the terms of valuation of the landholders' estates from iugera to money.[5]

Niebuhr, B. G., *Römische Geschichte*, i. 422–50, Eng. 200–12; Schwegler, *Römische Geschichte*, I. bk. xvii; Huschke, Ph. E., *Verfassung des Königs Servius Tullius*, ch. iii; Ihne, W., *History of Rome*, i. 62, 114; Nissen, H., *Templum*, 144 ff.; *Italische Landeskunde*, ii. 503 f.; Beloch, J., *Italischer Bund unter Roms Hegemonie*, ch. ii; Soltau, W., *Altröm. Volksversammlungen*, 375–548; Meyer, E., *Ursprung des Tribunats und die Gemeinde der vier Tribus*, in *Hermes*, xxx (1895). 1–24; controverted by Sp. Vassis, in *Athena*, ix (1897). 470–2; Neumann, K. J., *Grundherrschaft der röm. Republik*; Siebert, W., *Ueber Appius Claudius Caecus*; Mommsen, Th., *History of Rome*, bk. I. ch. vi; *Röm. Tribus*; *Röm. Staatsrecht*, iii. 161–98; *Abriss des röm. Staatsrechts*, 28–36; Marquardt, J., *Röm. Staatsv.* ii. 149–80; Willems, P., *Droit public Romain*, 40 ff., 98 ff.; Mispoulet, J. B., *Institutions politiques des Romains*, i. 37–42; *Études d'institutions Romaines*, 3–48; Lange, L., *Röm. Altertümer*, i. 501–22, and see index s. Tribus; Madvig, J. N., *Verfassung und Verwaltung des röm. Staates*, i. 100–8; Herzog, E., *Geschichte und System der röm. Staatsverfassung*, i. 39, 101 ff., 1016–31; Grotefend, C. L., *Imperium romanum tributim descriptum*; Kubitschek, J. W., *De romanorum tribuum origine ac propogatione*; *Imperium romanum tributim discriptum*; Pauly-Wissowa, *Real-Encycl.* i. 674–6: Aerarius (Kubitschek); 682–4: Aes equestre (idem); 780–93: Ager (idem); iii. 1281–3: Caere (Hülsen); 2650 f.: Claudia (Wissowa); iv. 117 f.: Clustumina (Kubitschek); Daremberg et Saglio, *Dict.* i. 125: Aes equestre and hordearium (Humbert).

[1] Livy xlv. 15.

[2] The expression tribu movere or in aerarios referre was still used, but meant no more than the transfer from a rural to an urban tribe and to the aerarian class within the latter; p. 62, n. 7.

[3] Cf. Livy xxiv. 18. 8 f.

[4] Livy xxiv. 43. 2 f.; Cic. *Cluent.* 42. 120.

[5] P. 86.

CHAPTER IV

THE CENTURIES AND THE CLASSES

THE ancient authorities represent Servius Tullius as the founder of an organization at once military and political — on the one hand the army composed of classes and centuries, and on the other the comitia centuriata. According to Livy [1] —

"From those whose rating was 100,000 asses or more he made 80 centuries, 40 of seniors and 40 of juniors, and termed them all the *first* class. The seniors were to be ready for guarding the city and the juniors were to serve in the field. The arms required of them were a helmet, round shield, greaves, and cuirass, — all bronze, — for the protection of the body. Their offensive weapons were a spear and a sword. To this class were added two centuries of sappers who were to serve without arms. Their duty was to convey the engines of war. The *second* class was made up of those whose rating was between 75,000 and 100,000 asses, 20 centuries of seniors and juniors together. They were equipped with an oblong shield (scutum) instead of a round one, and they lacked the cuirass, but in all other respects their arms were the same. The minimal rating of the *third* class was 50,000 asses, and the number of centuries was the same with the same distinction of age, and there was no change in arms excepting that greaves were not required. In the *fourth* were those appraised at 25,000 asses. They had the same number of centuries but their arms were changed, nothing being assigned them but a spear and a long javelin. The *fifth* class was larger, composed of 30 centuries. They carried slings and stones for throwing. Among them were counted the accensi, the hornblowers, and the trumpeters, 3 centuries. This class was appraised at 11,000 asses. Those whose rating was less formed one century exempt from military service. Having thus armed and organized the infantry, he levied 12 centuries of equites from among the chief men of the state. Also the 3 centuries instituted by Romulus he made into 6 others of the same names as those under which the three had originally been inaugurated." Afterward Livy speaks of the votes of the centuries in the comitia.

The ultimate source of this description, as well as of the similar account given by Dionysius, is the censorial document already mentioned,[2] sometimes termed the "discriptio cen-

[1] I. 43. The account given by Dionysius Hal. iv. 16 f.; vii. 59, is the same in principle, though slightly different in detail.

[2] P. 52.

turiarum,"[1] sometimes "Commentarii Servi Tullii"[2] on the supposition that Servius was the author. In reality it belonged to the Censoriae Tabulae[3] of the period immediately following 269.[4] The document gave a list of the classes, centuries, and ratings, and furnished directions for holding the centuriate assembly. As the military divisions and equipments mentioned by Livy in the passage above had been discarded long before this date,[5] they could not have been described in the document. The account of them found in our sources must, therefore, have been supplied by antiquarian study.[6] The annalist who first used these Tabulae in the censorial archives was Fabius Pictor.[7] Whether Livy and Dionysius derived their account directly from him or through a later annalist cannot be determined.[8] Though Cicero's source may ultimately have been the same, he seems to have depended largely on his memory and is chronologically, though not in substance, less exact. In assigning seventy rather than eighty centuries to the first class he most probably has in mind a stage of transition from the earlier to the reformed organization.[9]

A brief analysis of this description, as presented by Livy or Dionysius, will prove that it could not apply at the same time to

[1] Fest. 246. 30; or "discriptio classium," ibid. 249. 1.

[2] Livy i. 60. 4.

[3] Quoted by Cic. *Orat.* 46. 156, for the forms "centuria fabrum" and "procum." Varro, *L. L.* vi. 86–8, is an extract from the Tabulae of later time; cf. Mommsen, *Röm. Staatsr.* iii. 245, n. 1.

[4] P. 52. Proof of the date is the fact that the ratings are in the sextantarian *as*, legally adopted in 269 or 268 (page 86). The *as* of this standard was valued at one tenth of a denarius, so that 1000 asses = 100 denarii = 1 mina; Dion. Hal. iv. 16 f.; Polyb. vi. 23. 15: Οἱ ὑπὲρ τὰς μυρίας τιμώμενοι δραχμάς, descriptive of the highest rating — 100,000 asses; Mommsen, *Röm. Staatsr.* iii. 249, n. 4; Hill, *Greek and Roman Coins*, 47. It could not have been later than 241, in which year the reform of the centuriate assembly must have been far advanced, if not completed; page 215.

[5] P. 84.

[6] It is wrong to suppose with Soltau, in *Jahrb. f. cl. Philol.* xli (1895). 412, n. 6, that all the details of the Servian system were known only in this way.

[7] Cf. Livy i. 44. 2; Dion. Hal. iv. 15. 1.

[8] Smith, *Röm. Timokr.* 9 ff., supposes Calpurnius Piso to have been the intermediary. But a problem in which so many of the quantities are unknown is incapable of solution.

[9] P. 205, n. 5, 215.

an army and a political assembly: (1) The century of proletarians, which formed a part of the comitia, and which according to Dionysius was larger than all the rest together, was exempt from military service.[1] (2) The unarmed supernumeraries termed accensi velati must in their military function have lacked the centuriate organization, as will hereafter be made clear.[2] (3) The musicians and the skilled workmen who accompanied the army must also be eliminated from the centuriate organization of the army.[3] (4) The seniors, too, lacked the centuriate military organization.[4] (5) Thus the only pedites in the original centuriate system were the juniors. Even the military century of juniors was not in the beginning strictly identical with a voting century; and as time progressed, the one group diverged more and more widely from the other.[5]

Chiefly from these facts, which will become clear in the course of this study, we are warranted in concluding that the army was at no time identical with the comitia centuriata. As one was necessarily an outgrowth of the other, the military organization must have been the earlier. If therefore the original form of the centuriate system is to be referred to Servius Tullius, he will be considered the organizer of the phalanx, which the military centuries constituted,[6] not of the comitia.[7] This result harmonizes with the view of the ancient writers that the comitia centuriata exercised no functions — hence we have a right to infer that it had no existence — before the beginning of the republic.[8]

The following sketch of the development of the Roman military system from the earliest times to the institution of the manipular legion includes those features only which are essential to an understanding of the origin and early character of the centuriate assembly. The view maintained in this volume is, as suggested in the preceding paragraph, that the comitia

[1] Livy i. 43. 8; Dion. Hal. iv. 18. 2; p. 207.
[2] P. 80. [3] P. 81. [4] P. 81. [5] P. 82 f.
[6] Livy viii. 8. 3; Dion. Hal. iv. 22. 1.
[7] It is unnecessary here to consider the question as to the historical personality of Servius Tullius. In this volume the name will be given to the king (or group of kings?) who instituted the so-called Servian tribes and the military centuries and made a beginning of the census. [8] P. 201.

centuriata in the form described by Livy and Dionysius developed from the early republican military organization, which was itself the result of a gradual growth. Reference is made to equipments chiefly for the purpose of throwing light on the relation of the Roman to the Greek organization and of the various Roman military divisions to one another.

I. *The Primitive Graeco-Italic Army and the Origin of the Phalanx*

Recent research has brought to light a period of Italian history during which the military system of the Latins and Etruscans closely resembled that of the Mycenaeans, the former doubtless being derived in large part from the latter.[1] The nobleman,[2] equipped in heavy armor, rode forth in his chariot[3] to challenge his peer among the enemy to personal combat. The mass of common footmen were probably grouped in tribes and curiae (Greek phratries, brotherhoods),[4] as in Homeric

[1] Helbig, *Sur les attributes des saliens*, in *Mémoires de l'acad. d. inscr. et belles-let.* xxxvii (1906). 230 ff.; cf. *Comptes rendus de l'acad.* etc. 1904. ii. 206–12. Helbig finds that the Latino-Etruscan equipments of the time preceding Hellenic influence, as shown by archaeology, correspond closely with those of the Salii, whom he regards therefore as religious survivals from that early civilization. It is from archaeological data, combined with the well-known equipment of the Salii, that the close resemblance between the early Latino-Etruscan and the Mycenaean military system is established.

[2] Not merely the chief, as Helbig, *Comptes rendus*, 1900. 517, supposes. The ἡνίοχοι καὶ παραβάται who fought at Delium, and whom he rightly regards as a survival from the age of war-chariots, acted as a company not as individuals; Diod. xii. 70. 1.

[3] Helbig, *Le Currus du roi Romain*, in *Melanges Perrot*, 167 f. It was like that chiseled on a gravestone found by Dr. Schliemann on the acropolis of Mycenae, in the main identical with the Homeric chariot, represented in later time on the famous sarcophagus at Clazomenae; Pellegrini, in Milani, *Studi e materiali*, i. 91–3, 98.

[4] That the army of Romulus — the primitive Roman army — was a single legion, and that the Servian reform consisted accordingly in doubling it, is an ancient hypothesis accepted by some moderns, as Smith, *Röm. Timokr.* 38 f. An organization in definite numbers, however, as 1000 from each tribe, cannot arise till the state has grown sufficiently populous to make up the army of a part only of its available strength, when folk and army have ceased to be identical (Schrader, *Reallex.* 350), and it is agreed that this condition was not reached till after the adoption of the Servian reform; Delbrück, *Gesch d. Kriegsk.* i. 225; Smith, ibid. 52 f., 56.

Greece[1] and among the early Europeans[2] before the development of an organization based on a numerical system. The arms of the footmen must have been lighter, and probably varied with the individual's financial resources. These common troops could have had no special training or discipline, as they counted for little in war.[3] Yet in the Homeric age of Greece some attempt was made to keep the fighters in line, and to prevent the champions from advancing beyond it to single combat.[4] A similar tendency to even, rhythmic movement may be inferred for the Latin army.[5] The great innovators in this direction were the Lacedaemonians, to whom the honor of inventing the phalanx is chiefly due.[6] This improvement, which made an epoch in European warfare, could not have been later than the eighth century B.C. The phalanx was a line, several ranks deep, of heavy-armed warriors, who moved as a unit to the sound of music.[7] The depth varied as the occasion demanded; it was not necessarily uniform throughout the line, but for Lacedaemon eight may be considered normal.[8] The heavy-armed trooper carried a large shield, which covered the entire body, a helmet, and greaves; his offensive weapons were sword and spear.[9] Tyrtaeus mentions also a coat of mail though not as an essential part of the equipment.[10] The metal of their defen-

[1] *Il.* ii. 362.

[2] Schrader, ibid. For the Sueves, see Caesar, *B.G.* iv. 1; for the Lacedaemonian army, see p. 71. The assumption of Helbig, *Comptes rendus*, 1904. ii. 209, that the army was composed of patricians only is altogether unwarranted. Equally groundless is the notion of Soltau, *Altröm. Volksversamml.* 250, that the Homeric army was composed chiefly of nobles with a few light-armed dependents.

[3] Cf. Liers, *Kriegswesen der Alten*, 78; Niese in *Hist. Zeitschr.* xcviii (1907). 264, 266, 289.

[4] *Il.* iv. 293 ff.

[5] Represented by the dances of the Salii; Helbig, ibid. 211 f.

[6] Paus. iv. 8. 11; Polyaen. i. 10; Delbrück, *Gesch. d. Kriegsk.* i. 30 f.; Niese, in *Hist. Zeitschr.* xcviii (1907). 274 ff.

[7] Cf. Thuc. v. 70; Polyaen. i. 10.

[8] Cf. Thuc. v. 69. For this and other depths, see Delbrück, ibid. i. 25; Liers, *Kriegswesen der Alten*, 45; Lammert, in *N. Jahrb. f. kl. Philol.* xiii (1904). 276 f.

[9] Tyrtaeus, Frag. xi (Bergk). For the shield which covered "hips, legs, breast, and shoulders," v. 23 f. It was abolished by Cleomenes III; Plut. *Cleom.* 11; cf. Liers, ibid. 34; Lammert, ibid. 276 f.

[10] XII. 26; Xen. *Anab.* i. 2. 16. A public gift of a bronze cuirass is mentioned by Aristotle, *Lac. Pol.* 75, Müller, *Frag. Hist. Graec.* ii. p. 127. Gilbert, *Const. Antiq.* 73; Delbrück, ibid. 25, maintain that the cuirass was a regular part of the equipment. This is true of soldiers who carried smaller shields.

sive armor was mostly bronze; their swords and spear-points were probably iron, which the mines of Laconia abundantly supplied.[1] Although it is well known that the phalanx was composed of smaller units, the original organization can only be conjectured. It is not unlikely that in the beginning there were tribal regiments,[2] divided into companies of fifty or perhaps a hundred,[3] which were made up of still smaller groups. The military age extended from the twentieth to the sixtieth year.[4]

The phalanx was readily adopted by other Greek states, which modified it to suit their several conditions. In Athens and probably elsewhere the army had a tribal organization,[5] but a census was introduced in order to determine who possessed sufficient wealth for service on horseback, in the heavy infantry, and in the light infantry; and when once the census classes were adopted, it was easy to extend them to political uses. In this way the four property classes at Athens, probably instituted about the middle of the seventh century B.C.,[6] became under Solon if not earlier a basis for the distribution of offices and other political privileges. Naturally the Greeks of Sicily and Italy adopted the phalanx, and it is reasonable to suppose that the Romans derived it, through the Etruscans,[7] from one of these neighbors.

[1] Beloch, *Griech. Gesch.* i. 200 f.; cf. Liers, *Kriegswesen der Alten*, 34 f.; Droysen, *Griech. Kriegsalt.* 3 ff.

[2] Cf. the name of one of these regiments Μεσσοάτης (Schol. Thuc. iv. 8) derived from the village or local tribe Messoa. Schol. Aristoph. *Lysistr.* 453, mentions five by name; cf. Aristotle, Frag. 541. Perhaps a sixth for guarding the kings was drawn from all the tribes; Busolt, *Griech. Gesch.* i. 535 ff. with notes. Lenschau, in *Jahresb. ü. Altwiss.* cxxxv. 83, holds that there were but four phylae.

[3] The name pentecosty indicates that it originally comprised fifty men, which suggests that the century may have been a higher group. Before the Peloponnesian War (Thuc. v. 68) the Lacedaemonian organization had departed far from its original form.

[4] Droysen, *Griech. Kriegsalt.* 70; Gilbert, *Const. Antiq.* 72. Compulsory service beyond the border ceased with the fortieth year; Xen. *Hell.* v. 4. 13.

[5] Cf. Liers, *Kriegsw. der Alten*, 14.

[6] Busolt, *Griech. Gesch.* ii. 180 ff.; Helbig, in *Mém. de l'acad. des inscr.* xxxvii[1] (1904). 164. But the Athenian army did not become efficient till long after Solon; cf. Niese, in *Hist. Zeitschr.* xcviii (1907). 278–82.

[7] The Romans believed that they got the phalanx from the Etruscans; *Ined. Vat.*, in *Hermes*, xxvii (1892). 121 from an early historian, Fabius Pictor or Posidonius or Polybius (Pais, *Anc. Italy*, 323); Diod. xxiii. 2 (Müller); Athen. vi. 106.

II. *The Servian Army*

As the heavy troops of the Greek line were all armed alike, the Romans probably at first composed their phalanx in a similar way, without gradations of equipment. The complex system of census groupings in the army as we find it immediately before the institution of the manipular legion could only have resulted from a long development. The statement last made finds justification in the fact that the term classis [1] was originally limited to the first or highest census group, all the rest being "infra classem." [2]

Not only was the organization like that of the Greeks, but the arms, too, were in the main Greek. The soldiers of the classis were equipped with helmet, shield, greaves, spear, and sword; as they wore a cuirass, they used a large round Etruscan buckler [3] instead of the man-covering Dorian shield. They

p. 273 f.; Wendling, in *Hermes*, xxviii (1893). 335 ff.; Müller–Decke, *Etrusker*, i. 364 ff.; Smith, *Röm. Timokr.* 40. The circumstance does not prove that the Romans were then in subjection to the Etruscans.

[1] Some of the ancients derive classis from calare, "to call," hence "summoning;" Dion. Hal. iv. 18. 2; Quint. *Inst.* i. 6. 33; accepted by Walde, *Lat. Etym. Wörterb.* 125; Soltau, *Altröm. Volksversamml.* 242; Lange, *Röm. Alt.* i. 464. Others connected it with κᾶλος "firewood," hence "gathering;" Serv. *in Aen.* i. 39; Isid. *Etym.* xix. 1. 15; Schol. Luc. i. 306. Corssen, *Ausspr.* i. 494, proposes to derive it from a root "clat," which appears in the Greek κλητεύειν (Lat. *clat-ē-re), Germ. laden, which would still give the meaning "summoning;" cf. Curtius, *Griech. Etym.* 139; Vaníček, *Griech. Lat. etym. Wörterb.* 143 (*cla-t, cla-t-ti-s). Mommsen accepted the meaning "summoning" in the early editions of his *History*, but rejects it in the *Staatsrecht*, iii. 262 f. (cf. his *History*, English ed. i. 1900. 115 f., 118) on the ground that however adapted it may have been to the later political classes, it could not well apply to the fleet and army, and hence could not belong to the earlier use of the word, which denoted the line in contrast with those who fought outside the line. But against his reasoning it could be urged that classis with the idea of "summoning" first applied to the line of heavy infantry — the only effective part of the army; and when once the connotation of "line" had been established, it could easily extend to the fleet.

[2] Gell. vi (vii). 13: "'Classici' dicebantur non omnes, qui in quinque classibus erant, sed primae tantum classis homines, qui centum et viginti quinque milia aeris ampliusve censi erant. 'Infra classem' autem appellabantur secundae classis ceterarumque omnium classium, qui minore summa aeris, quod supra dixi, censebantur. Hoc eo strictim notavi, quoniam in M. Catonis oratione, qua Voconiam legem suasit, quaeri solet, quid sit 'classicus,' quid 'infra classem;'" Fest. ep. 113; cf. Cic. *Verr.* II. i. 41. 104; Pseud. Ascon. 188; Gaius ii. 274.

[3] The statement of Diod. xxiii. 2 (Müller), and of the *Ined. Vat.* (in *Hermes*, xxvii. 121) that the Romans derived their round shield from the Etruscans accords with

were grouped in centuries,[1] forty of which composed the classis in the fully developed phalanx.[2] The age of service of the juniors, who alone fought in the field, extended from the completed seventeenth to the completed forty-sixth year,[3] whereas the seniors from the forty-seventh to the sixtieth year formed a reserve.

A still nearer connection can be found between the Roman and the Greek horsemen. As is proved by archaeology, the earliest Greek knights had no specialized weapons or armor and were not accustomed to fight on horseback, but were heavy infantry who used their horses simply as conveyance.[4] The same is true of the earliest Roman equites, whose equipment closely resembled that of the Greek horsemen. On account of their swiftness they were primitively called celeres.[5] Although these mounted footmen are generally known as equites, which in this sense may but loosely be translated knights, the Romans did not institute a true cavalry till the period of the Samnite wars.[6] It is a curious fact that some horsemen, Roman as well as Greek, were provided each with two horses,[7] one for the warrior and the other for his squire,[8] and that the mounted

archaeological evidence for the use of the round shield by the early Etruscans; Pellegrini, in Milani, *Studi e materiali*, i. 91 ff.; Helbig, in *Comptes rendus de l'acad. des inscr.* 1904. ii. 196.

[1] The notion of Delbrück, *Gesch. d. Kriegsk.* i. 227, that the army was not organized in centuries till after the beginning of the republic has no foundation whatever.

[2] P. 76. The original number cannot be determined.

[3] Tubero, in Gell. x. 28. 1; Non. Marc. 523. 24. From this fact it appears that military conditions made a far greater demand upon the early Romans than upon the Lacedaemonians.

[4] Helbig, in *Comptes rendus de l'acad. des inscr.* 1900. 516 ff.; *Mém. de l'acad.* etc. xxxvii[1] (1904). 157 ff.; *Hermes* xl (1905). 109. The objection of Smith, *Röm. Timokr.* 37, n. 3, is not well founded.

[5] Incertus Auctor (Huschke), p. 1.

[6] *Ined. Vat.*, in *Hermes* xxvii (1892). 121; Helbig, ibid. xl (1905). 114. The transvectio equitum was instituted in 304; Livy ix. 46. 15. On the close connection of the Roman cavalry with that of the Greeks of southern Italy, see Pais, *Storia di Roma*, I. ii. 607, n. 1.

[7] The priores had each two horses; Granius Licinianus xxvi, p. 29: "Verum de equitibus non omittam, quos Tarquinius ita constituit, ut priores equites binos equos in proelium ducerent;" cf. Fest. ep. 221. On the Tarentine cavalry, see Livy xxxiii. 29, 5. The inference is that the posteriores had one horse each.

[8] Helbig, in *Hermes* xl (1905). 107. *Notizie degli Scavi*, 1899. 167, fig. 17 (cf. p. 157); 1900. 325, fig. 28; Pellegrini, in Milani, *Studi e materiali*, i. 106.

soldiers of Etruria were in these respects the same.[1] A further resemblance between the earliest Greek and Roman horsemen lies in the fact that they were noble.[2]

In their account of the growth of the mounted service during the regal period the ancient authorities show great inconsistencies. It seems probable that the early annalists pictured the increase in the knights in a way analogous to that of the senate: at first Romulus formed a troop, or century, from the Ramnes; afterward a second was added from the Tities; and still later the Luceres furnished a third.[3] Then Tarquinius Priscus doubled the number, making six in all, and Servius finally increased it to eighteen centuries. This simple development, itself a reconstruction, was complicated by the desire of the historians to make the number of knights under Servius agree with the number under Augustus, given by Dionysius[4] at about 5000; hence the assumption of 200 or even 300 knights to the century as early as the reign of Romulus.[5] It is possible by clearing away these evident misconceptions to discover the approximate truth.

When the chariot gave way to the horseback rider is not definitely known; at all events the change seems to have taken place under Hellenic influence, and could hardly therefore have been earlier than the beginning of the seventh century B.C.[6] The idea of the sources is that there came to be three troops of horsemen, furnished by the tribes,[7] as well as three regiments of foot, that before Servius the number of troops of horse was doubled, and that the six troops thus formed were named accordingly after the tribes Ramnenses, Titienses, and Lucerenses priores and posteriores respectively.[8] The priores had each two horses, the posteriores one.[9] Hence the essential difference

[1] Pellegrini, ibid. i. 97, fig. 5; 104, fig. 10. [2] P. 75. [3] P. 3, n. 8. [4] VI. 13. 4.

[5] The principal sources are Cic. *Rep.* ii. 20. 36; 22. 39; Livy i. 13. 8; 15. 8; 36. 7; 43. 8 f.; Dion. Hal. ii. 13; vi. 13. 4; Pliny, *N. H.* xxxiii. (9.) 35; Fest. ep. 55; Plut. *Rom.* 13. On the basis of these sources we could reckon an increase to 1800, 3600, or 5400 according to our assumption as to the number of horsemen to the century; cf. Gerathewohl, *Die Reiter und die Rittercenturien*, 3–8.

[6] Helbig, in *Hermes*, xl (1905). 101, 105, 107.

[7] Livy i. 13. 8; Dion. Hal. ii. 13. 1 f.; Fest. ep. 55.

[8] Cic. *Rep.* ii. 20. 36; Livy i. 36. 2, 7; Fest. 344. 20; ep. 349. Writers differ slightly in the form of the names. [9] P. 73, n. 7.

between these divisions was in rank and wealth rather than in the relative time of their institution. Long after Servius both divisions continued to be patrician.[1] As the centuriate organization of Servius applied to the infantry, the cavalry remained little affected by it. The six troops with their old names survived, and eventually became a part of the comitia centuriata. In the military sphere, however, the troop no longer retained its identity; but the whole body was divided into twenty turmae, each composed of three decuries commanded by decurions.[2] When with the institution of the republic the phalanx was split into two legions, ten turmae of cavalry were assigned to each legion.[3] As in historical time the number of horsemen to a legion did not exceed 300,[4] and as we have no reason to sup-

[1] This distinction of rank among the patrician centuries of the comitia centuriata is proved by the expression "proceres patricii" in the Censoriae Tabulae, quoted by Fest. 249. 1: "Procum patricium in descriptione classium, quam fecit Ser. Tullius, significat procerum. I enim sunt principes;" Cic. *Orat.* 46. 156: "Centuriam fabrum et procum, ut censoriae tabulae loquuntur, audeo dicere, non fabrorum aut procorum." Mommsen, *Röm. Staatsr.* iii. 109, n. 1, has rightly referred it to one of the sex suffragia, for no century outside this group could have been so designated; cf. Livy ii. 20. 11, who speaks of the cavalry as proceres iuventutis. The mention of a century of leading patricians implies the existence of one or more centuries of the less distinguished members of the same rank, which must have been the rest of the sex suffragia. The superior rank of the equites in early Rome is proved by Dion. Hal. ii. 13. 1; iv. 18. 1; Livy i. 43. 8 f.; ii. 20. 11. In ii. 24. 2 Livy implies that the patricians did not serve on foot (militare), and in iii. 27. 1 he speaks of a patrician who, as an exception among his rank, served on foot because of his poverty. In ii. 42 f. he distinguishes the cavalry from the infantry as patricians from plebeians. The fact that in the political conflict between the two social classes the patricians often threatened to carry on foreign wars with the aid merely of their clients (cf. Dion. Hal. x. 15, 27 f., 43) proves that the phalanx was essentially plebeian. On the honorable place of the equites in the camp, see Nitzsch, in *Hist. Zeitschr.* vii (1862). 145. That the sex suffragia remained patrician down to the reform of the comitia centuriata is probable; cf. Sallust, *Hist.* i. 11, who represents the struggle between the social classes as continuing to the opening of the war with Hannibal; see also Mommsen, *Röm. Staatsr.* iii. 254.

[2] Dion. Hal. ii. 7. 4; cf. Polyb. vi. 25. 1; Varro, *L. L.* v. 91: "Turma terima (e in u abiit) quod ter deni equites ex tribus tribubus Titiensium Ramnium Lucerum fiebant: itaque primi singularum decuriones dicti, qui ab eo in singulis turmis sunt etiamnunc terni;" cf. Curiatius, in Fest. 355. 6. [3] Cf. Polyb. vi. 25. 1.

[4] Three hundred is given as normal by Polyb. i. 16. 2; vi. 20. 9. In iii. 107. 10 f. he states it at 200, increased to 300 when to meet extraordinary cases the legion was strengthened to 5000; cf. ii. 24. 3. Livy, xxii. 36. 3, agrees with the latter statement. Mommsen, *Röm. Staatsr.* iii. 477, believes that the normal number was 300, decreased to 200 when a greater number of legions was levied.

pose that at an earlier period this arm of the service was proportionally stronger, we may conclude that in the Servian phalanx, or double legion, the number did not exceed 600.

From the foregoing discussion it appears clear that the Servian military system rested upon a division of the citizens into four groups, closely corresponding to the Athenian census divisions: (1) the equites priores, like the pentacosiomedimni, (2) the equites posteriores, like the hippeis,[1] (3) the classis, like the zeugitae, (4) the light troops infra classem, like the thetes. The distinction between priores and posteriores rested not upon an assessment but upon a less precise difference in wealth, whether determined by the individual concerned or by the state we cannot know; it represented, too, a gradation of nobility. The distinction between the knights and the classici was one of rank; that between the classis and the soldiers infra classem was alone determined by the census.

III. *The Development of the Five Post-Servian Military Divisions on the Basis of Census Ratings*

This arrangement was by no means final. Further changes were made in both foot and horse which were to have a bearing on the organization of the comitia centuriata. After a time[2] two additions of men less heavily armed than the classici were made to the phalanx, whether simultaneously or successively cannot be determined. There were now forty centuries of classici, and the additions comprised ten centuries each, the second less heavily armed than the first, though they may both be considered heavy in contrast with the light troops. Perhaps the state according to its ability made up the deficiency in the equipment, so as to render the entire phalanx as evenly armed as possible.[3] It numbered sixty centuries of heavy infantry,

[1] Niese, *Hist. Zeitschr.* xcviii (1907). 283, rightly assumes that the first and second classes at Athens were not cavalry; Helbig is right in understanding them to be mounted hoplites. Niese's criticism (ibid. 287 and n. 1) of Helbig's view is not convincing.

[2] Considerable time was required for the establishment of the earliest known meaning of classis before the second and third divisions were added.

[3] This is a conjecture of Bruncke, in *Philol.* xl (1881). 362, favored by Delbrück, *Gesch. d. Kriegsk.* i. 222.

composed of three grades which depended upon the census rating.[1] The light troops were also grouped in two divisions on the same principle. The first comprised ten centuries; originally the second may have contained the same number, in which case four were afterward added to make the fourteen known to exist in the fully developed system.[2] There were five divisions of infantry amounting to eighty-four centuries of a hundred men each. Undoubtedly the growth of the army to this degree of strength was gradual, though the successive steps cannot be more minutely traced.[3]

In making the levy the military tribunes selected the soldiers from the lists of tribesmen, taking one tribe after another as the lot determined.[4] The early Romans must have striven to distribute the population as equally as possible among the tribes in order to render them approximately equal in capacity for military service. As long as this equality continued, the officials could constitute the army of an equal number of men from each tribe. These considerations explain the close relation in early time between the number of tribes and of centuries as well as the suggestions offered by our sources as to an early connection between the centuries and the tribes.[5] While there were but twenty tribes we may suppose that the legion comprised but 4000 men, which was raised to 4200 when the twenty-first tribe was added. In this way can we account for the number of centuries to the legion. If but half the available military strength was required, the magistrates might draw by lot ten

[1] P. 79, 86.

[2] Usually scholars (cf. Domazewski, in Pauly-Wissowa, *Real-Encycl.* iii. 1953 f.; Delbrück, *Gesch. d. Kriegsk.* i. 227; Smith, *Röm. Timokr.* 39) assume fifteen centuries for the fifth rating, on the authority of Livy i. 43. 7; Dion. Hal. iv. 17. 2; vii. 59. 5. But our knowledge of the phalanx is only inference, which to be acceptable must have at least the merit of possibility. The number fifteen is wrong because it could not have been divided evenly between the two legions; and on the other hand it will be shown later (p. 208) that in all probability the fifteenth century was not military but was added in the make up of the comitia centuriata.

[3] Müller, in *Philol.* xxxiv (1876). 129, is right in supposing that the legion was strengthened between the time of Servius and 387, but it was not in the way he assumes. The tradition of a legion (half phalanx) of 4000 men is preserved in Livy vi. 22. 8.

[4] Polyb. vi. 20.

[5] Cf. Smith, *Röm. Timokr.* 121 ff.

tribes from which to make the levy.[1] It was an easy matter as long as the heavy troops were limited to the classis;[2] but when two other ratings were added, and when meantime the tribes must have grown unlike in population, it became practically impossible to maintain for each rating a just proportion from the tribes;[3] and perhaps this was the chief reason for the modification in the method of recruiting. When therefore the tribes were increased to twenty-five, and it was deemed inexpedient to make a corresponding enlargement of the legion,[4] a new principle was adopted for the levy: after determining the ratio between the number of men needed and the whole number available, the officers drew from each tribe a number proportionate to its capacity.[5] It would agree well with all the known facts to suppose that the addition of the second and third ratings, followed by a more thorough organization of the light troops, belongs to the early republic (509–387),[6] when Rome needed all her strength in her life and death struggle with hostile neighbors. At the same time the purchase of armor and the increased burden of military duty would help account

[1] Livy iv. 46. 1: "Dilectum haberi non ex toto passim populo placuit: decem tribus sorte ductae sunt. Ex his scriptos iuniores duo tribuni ad bellum duxere." If this passage does not state a historical fact, at least it gives the idea of the writer as to the custom of earlier time. [2] P. 72, 76.

[3] Cf. Smith, *Röm. Timokr.* 51 ff.

[4] In time of especial danger, however, the legion was increased to five thousand; Polyb. vi. 20. 8.

[5] Cf. Mommsen, *Röm. Staatsr.* iii. 268, n. 2.

[6] That the phalanx was a comparatively late institution at Rome, or that it was slow in becoming the only military system, is indicated by the survival in tradition of a more primitive mode of warfare. Sometimes in the early republic a single gens with its clients took the field; for the Fabian gens, see Livy ii. 48 ff. Often the patricians threatened to arm their clients, to carry on a war without the aid of the troublesome plebeians; cf. Dion. Hal. x. 15, 27 f., 43. As there was no motive in later time for the invention of such stories, they must contain a kernel of real tradition; hence they could not go back to the sixth century, and it is difficult to believe that they are so old as the fifth.

Collateral evidence that the second and third divisions were instituted relatively late may be found in the circumstance that the scutum, the distinctive piece of armor of these divisions, was introduced no earlier than the age of Camillus — the period of the war with Veii and the Gallic conflagration; Livy viii. 8. 3; Müller-Deecke, *Etrusker*, i. 366. It was Samnite (Athen. vi. 106, p. 273 f.; cf. Sall. *Cat.* 51), and was therefore probably adopted in the fourth century when Rome first came into contact with that people.

for the desperate economic condition of the poorer peasants of that epoch.

The proportions of the five ratings — 20–15–10–5–2½ or 2 — to be discussed hereafter,[1] suggest an explanation of their origin. It would be reasonable to assume that the normal holding of the well-to-do citizen was a twenty-iugera lot and that the Servian phalanx was composed of possessors of that amount, the light-armed being their sons and others distinctly inferior in wealth. In course of a few generations as the population grew, with no corresponding territorial expansion or colonization or industrial development, and with only a limited conversion of waste to arable land, many of the lots became divided and subdivided. The result was a weakening of the phalanx at a time when the state was in the most pressing need of military resources. The institution of the five ratings as a basis for the reorganization of the army was a temporary expedient for meeting the crisis, to be superseded not long afterward by a better system founded on military pay. In all probability the introduction of the five ratings, or at least the beginning of the movement in that direction, should be closely connected with the institution of the censorship in 443 or 435.[2] The supposition would give us a sufficient reason for the creation of this new office at that time, and the strengthening of the army would explain the success of the Romans in the wars immediately following.

How the five ratings were arrayed in battle is unknown. If the front counted a thousand men (milites),[3] the classis comprised four ranks (4000), the second and third ratings one rank each, making in all six ranks of heavy troops (6000).[4] Twenty centuries could be drawn from the two ratings of light troops to complete the eight ranks when needed.[5] But the Romans

[1] It is evident to the reader that these proportions are those of the discriptio centuriarum of Livy and Dionysius (p. 66 above), and it will be made clear below (p. 86) that the ratings were originally in terms of iugera, the minima of the five ratings being in all probability 20, 15, 10, 5, and 2½ or 2 iugera respectively.

[2] For the date, see Mommsen, *Röm. Staatsr.* ii. 334 f.; Kubitschek, in Pauly-Wissowa, *Real-Encycl.* iii. 1902 f.; Pais, *Storia di Roma*, I. ii. 13, 33 f.

[3] There may be some truth in the etymology suggested by Varro, *L. L.* v. 89; cf. Soltau, *Altröm. Volksversamml.* 256.

[4] Cf. Liers, *Kriegsw. d. Alten*, 46.

[5] Dionysius Hal. iv. 17. 1, includes the fourth rating in the phalanx of heavy infantry. For other possibilities of arrangement, see Smith, *Röm. Timokr.* 46 f.

undoubtedly exercised the same good judgment as the Lacedaemonians in varying their formation to suit the emergency;[1] and for that reason it is wrong to assume the same depth for all occasions or an even depth for any one occasion. The management of long lines one-man deep must have been extremely difficult, if not impossible.[2] The explanation already suggested, that the state supplied the deficiency in equipment,[3] would greatly simplify the case, for there would then exist no need of arraying the census groups in successive lines. Whatever may have been the tactic arrangement, it did not continue long, for soon after the introduction of regular pay, about 400 B.C.,[4] the distinction between the ratings ceased to have an importance for military affairs.

IV. *The Question as to the Connection of the Supernumeraries and the Seniors with the Military Centuries*

A number of supernumeraries termed accensi velati accompanied the army. The epithet accensi proves them to have been outside the five ratings, while velati describes them as wearing civilian dress. We are informed by the sources that they carried water and weapons to the fighting men, stepped into the places of the dead and wounded, and acted as servants to the lower officers.[5] These men could not have been organized in centuries,[6] for they were drawn up in the rear behind

[1] Thuc. v. 68; p. 86 above.

[2] Delbrück, *Gesch. d. Kriegsk.* i. 229; Smith, *Röm. Timokr.* 45 ff. That the second and third divisions of the phalanx were sometimes withdrawn to operate on the flanks (Soltau, *Altröm. Volksversamml.* 249) is possible, though we have no proof of it.

[3] P. 76. From early times the Greek and Italian states kept arsenals with which to arm the poor in crises; Liers, *Kriegsw. d. Alten*, 36 f. [4] P. 84.

[5] Fest. ep. 14, 18, 369; Varro, *L. L.* vii. 56–58. From them the centurions and decurions engaged their servants; Cato, in Varro, *L. L.* vii. 58; Varro, *Vit. pop. rom.* iii, in Non. Marc. 520; Veget. ii. 19. Hence they served the civil magistrates as attendants; cf. Censoriae Tabulae, in Varro, *L. L.* vi. 88; Livy iii. 33. 8; Suet. *Caes.* 20; Non. Marc. 59. They must have corresponded with the squires of the Greek and Roman cavalry; p. 73. They were sometimes called adscriptivi, or as carriers ferentarii. If, as has been suggested, the secretaries and other attendants of the higher officers were also drawn from them, this circumstance would help explain the honor attaching to the collegium accensorum velatorum of imperial time; Mommsen, *Röm. Staatsr.* iii. 289; Delbrück, *Gesch. d. Kriegsk.* i. 233.

[6] Notwithstanding Kubitschek, in Pauly-Wissowa, *Real-Encycl.* i. 135 f.

the light troops; they extended along the entire breadth of the army,[1] and must have greatly exceeded one hundred or even two hundred. The musicians,[2] too, who accompanied the army were not grouped in two centuries, for they were distributed throughout the army.[3] There is no reason for assuming exactly two hundred musicians[4] or exactly two hundred workmen,[5] or for supposing that any of the men of this description were organized in centuries in the army. Reasoning in a similar way in regard to the seniors, we conclude that their organization in centuries could not have belonged to the original Servian system. A military century, as the name indicates, must have contained a hundred men.[6] But in any static population there are three times as many men between seventeen and forty-six as between forty-six and sixty[7] — in Rome there were three times as many juniors as seniors; and as the number of junior and senior centuries was equal, the latter could have contained only about thirty-three each, on the supposition that the whole male population between seventeen and forty-six years was organized in centuries.

The mere fact that the senior century contained so few men suggests that it was not a military institution. This impression is confirmed by the information that the seniors were reserved for the defence of the city, while the juniors took the field in

[1] Livy viii. 8. 8. Leinveber, in *Philol.* N. F. xv (1902). 36, estimates 558 accensi to the legion.

[2] The cornicines tubicinesque; Livy i. 43. 7.

[3] The cornicines marched in front of the banners; Joseph. *Bell. Iud.* v. 48; Fiebiger, in Pauly-Wissowa, *Real-Encycl.* iv. 1602.

[4] The number is unknown. In the legio III Augusta there were thirty-six cornicines; *CIL.* vii. 2557; Fiebiger, ibid. 1603.

[5] Livy i. 43. 3.

[6] Varro, *L. L.* v. 88: "Centuria qui sub uno centurione sunt, quorum centenarius iustus numerus;" Fest. ep. 53: "Centuria . . . significat . . . in re militari centum homines;" Isid. *Etym.* ix. 3. 48; cf. Huschke, *Verf. d. Serv.* 107.

[7] Estimates have been made by Müller, in *Philol.* xxxiv (1876). 127; Delbrück, *Gesch. d. Kriegsk.* i. 224; Beloch, *Bevölk. d. griech.-röm. Welt*, 42 f.; Smith, *Röm. Timokr.* 67. In the United States the ratio is more than four to one; *Special Reports: Suppl. Analysis and Derivative Tables, Twelfth Census of the United States*, 1900, Washington, 1906. p. 170 f. The estimate given in the text is based upon the "Deutsche Sterbetafel" for men, in E. Czuber, *Warscheinlichkeitsrechnung* (Leipzig, 1903), p. 572, 574. The ratio is almost exactly three.

active service.[1] When we reflect that even in the early republic the seniors could not often have been called on for defence, as the juniors were ordinarily sufficient for the purpose,[2] that the manning of the walls did not necessarily require a division into companies or an equipment like that for field service, and that when it was thought expedient for the seniors to serve in centuries or cohorts, their enrolment in these companies is especially mentioned, our conviction that the senior centuries did not belong to the original Servian organization grows into a certainty.[3]

V. *Conclusions as to the Servian and Early Republican Organizations; Transition to the Manipular Legion*

In our search for the Servian and post-Servian schemes of military organization we found it necessary to eliminate from the discriptio centuriarum all the centuries of pedites with the exception of the juniors. But even a military century of juniors could not have remained identical with a voting century; for the

[1] Livy i. 43. 2. For the year 401, see Livy v. 10. 4: "Nec iuniores modo conscripti, sed seniores etiam coacti nomina dare, ut urbis custodiam agerent;" for 389, vi. 2. 6; for 386, vi. 6. 14; for 296, x. 21. 4: "Nec ingenui modo aut iuniores sacramento adacti, sed seniorum etiam cohortes factae libertinique centuriati. Et defendendae urbis consilia agitabantur;" cf. Mommsen, *Röm. Staatsr.* ii. 409, n. 5. The last of the definite instances here mentioned could alone be historical, and in this case not centuriae or legiones but cohortes seniorum are spoken of.

[2] Cf. Delbrück, *Gesch. d. Kriegsk.* i. 227 f.

[3] If the senior centuries were formed in the way assumed by Mommsen, *Röm. Staatsr.* iii. 261 ("Nicht selbständig gebildet worden, sondern daraus hervorgegangen, dass wer aus einer Centurie des ersten Aufgebots Alters halber ausschied, damit in die entsprechende Centurie des zweiten Aufgebots eintrat"), about a half generation must have been required to evolve them. An objection to his idea is that the military centuries as well as the legions were formed anew at each year's levy (Polyb. vi. 20, 24), whereas the political centuries were made up by the censors (cf. Cic. *Rep.* ii. 22. 40: "In una centuria censebantur"), doubtless modified annually by the consuls. A military century and a political century accordingly could not have been composed of the same men.

The Tabulae Iuniorum contained the names of all juniors in honorable service in the field; Livy xxiv. 18. 7. Tabulae Seniorum are not mentioned. Classis Iuniorum (Fest. 246. 30) may apply to all eighty-five (or eighty-four) centuries of juniors, as Lange, *Röm. Alt.* i. 474, supposes, or to the first class; Tubero, *Historiae*, i, in Gell. x. 28. 1: "Scripsit Servium Tullium regem, populi Romani cum illas quinque classes iuniorum census faciendi gratia instituerent." It is doubtful whether there was a separate list of seniors.

former comprised a fixed number and the same for all ratings, whereas in the comitia of historical time the centuries varied greatly in size, many of them containing far more than a hundred men each. In the four lower classes each century contained as many men as the entire first class;[1] and individuals constantly shifted from one class to another as their several properties increased or diminished.[2] It is a mistake, therefore, to think of the army as identical with even the junior centuries of the comitia.[3] Doubtless when the Servian army was first introduced, its organization was made to fit actual conditions, so that all who were liable to service found their place in it; but as the political assembly of centuries was instituted many years afterward, the army with its various enlargements could have kept meanwhile no more than approximate pace with the changing population, and at no time could it include the physically disqualified, who nevertheless had a right to vote in the junior centuries of the political assembly. On the other hand there were soldiers in the army too young to be in the comitia centuriata.[4]

The conclusion as to the strength of the army in the first years of the republic, before the latter had acquired any considerable accession of territory, corresponds closely with a moderate estimate of the population under the conditions then existing. The area of the state was about 983 square kilometers (equivalent to 379.5 sq. mi. or 242,899 acres).[5] Estimating the population of this agricultural community at its maximum of sixty to the square kilometer, we should have less than 60,000 for the entire area.[6] The number of men from seventeen

[1] Cic. *Rep.* ii. 22. 40: "Illarum autem sex et nonaginta centuriarum in una centuria tum quidem plures censebantur quam paene in prima classe tota."

[2] Soltau, *Altröm. Volksversamml.* 240.

[3] The confusion of the comitia with the army, which the ancient writers began, the moderns have intensified till the subject has become utterly incomprehensible. Chiefly to Genz, *Servianische Centurienverfassung* (1874) and Soltau, *Altröm. Volksversammlungen* (1880) belongs the credit of putting in a clear light the fact that the original Servian organization was an army. Both authors, however, have made the fundamental mistake of supposing that for a time during the early republic the army officiated as an assembly.

[4] Livy xxiv. 8. 19.

[5] After the inclusion of the Tribus Clustumina; Beloch, *Ital. Bund*, 74; Smith, *Röm. Timokr.* 58, n. 1.

[6] Delbrück, *Gesch. d. Kriegsk.* i. 223 f.; Smith, *Röm. Timokr.* 58.

to sixty, the Roman military age, should be about thirty per cent of the population[1]—less therefore than 18,000. If the ratio of juniors to seniors was about three to one,[2] we should have about 13,000 juniors to 5000 seniors. But a deduction must be made for slaves and for the physically incapacitated, leaving perhaps 9000 or 10,000 juniors and 3000 or 4000 seniors. These results are not unreasonable. Making allowance for several hundred supernumeraries,[3] we should then have no more than enough juniors to fill the eighty-four centuries of foot and the six troops of horse. It is clear, therefore, that all available forces were included in the army and that the junior centuries could not have contained more than a hundred men each.

Even before the phalanx had thus been brought to perfection, modifications were being made in the equipment under the influence of the Gallic invasion.[4] The introduction of pay, about 400 B.C., as has been said,[5] broke down the distinction of equipment based on degree of wealth, and not long afterward, probably in the time of the Samnite wars, the phalanx gave way to the manipular legion, which reached its full development in the Punic wars.[6]

VI. *The Five Classes and their Ratings*

Though originally denoting the men of the first rating, who possessed the fullest equipment,[7] the term classis with an explanatory adjective came to apply to the entire army[8] or to its component parts.[9] The plural "classes" came finally to mean the five census groups, represented by the five timocratic gradations of the comitia centuriata. What had formerly been the classis then came to be known as classis prima, and the "infra classem" ratings were numbered downward second, third,

[1] Beloch, *Bevölk. d. griech.-röm. Welt*, 53; Meyer, *Forsch. z. alt. Gesch.* ii. 162, n. 3; Delbrück, ibid. i. 14. Ferrero's estimate (*Greatness and Decline of Rome*, i. 1) of a total population of 150,000 seems to be too large.

[2] P. 81. [3] Cf. Liers, *Kriegsw. d. Alten*, 10.

[4] Ascribed to Camillus; Plut. *Cam.* 40; cf. Fröhlich, *Gesch. d. Kriegsführung und Kriegskunst der Römer zur Zeit der Rep.*; Schiller, *Röm. Alt.* 708.

[5] P. 80; cf. 63. [6] Fröhlich, ibid. 21 f.; Schiller, ibid. [7] P. 76.

[8] Fest. 189. 13; ep. 56, 225; Fabius Pictor, *Annales*, i, in Gell. x. 15. 3 f.

[9] Gell. i. 11. 3; Vergil, *Aen.* vii. 716: "Hortinae classes."

fourth, and fifth. Probably this extension in the use of the word was not made till after the disappearance of the ratings from the army — how much later we do not know. In a speech delivered in 169 in favor of the lex Voconia the elder Cato more than once examined into the meaning of classicus and infra classem.[1] A hasty inference would be that at this late date classis was still strictly limited to the first rating. It is to be noted, however, that the early meaning might be retained in a legal formula long after it had disappeared from general use, that classicus certainly preserved its original meaning notwithstanding the new development of the noun from which it is derived, and especially that the early sense of the terms classicus and infra classem was not generally known in 169, else Cato would not have taken such pains to define them. We know that the ratings were termed classes in 111,[2] and from what has just been said on the Voconian law it seems probable that the development took place long before 169. The circumstance that in their "discriptio centuriarum" Livy and Dionysius make no reference to the distinction between classis and infra classem would favor the supposition that they found no such distinction in their common source — ultimately Fabius Pictor. Hence it is not unlikely that classis was used in its historical meaning of property class in the censorial document from which Fabius derived his knowledge of the fully developed comitia centuriata, and which belonged to the period immediately following 269.[3]

[1] Gell. vi (vii). 13. 3: "In M. Catonis oratione, qua Voconiam legem suasit, quaeri solet, quid sit classicus, quid infra classem;" p. 90 below.

[2] *CIL.* i. 200 (Lex Agr.). 37: ("Recuperatores ex ci)vibus L quei classis primae sient, XI dato."

[3] P. 66 f.; cf. Fest. 249. 1: "In descriptione classium quam fecit Ser. Tullius." The attempt of Smith, *Röm. Timokr.*, especially 140 ff., to prove that the five classes were introduced by the censors of 179 has nothing in its favor. It rests upon Livy xl. 51. 9: "Mutarunt suffragia, regionatimque generibus hominum causisque et quaestibus tribus descripserunt." This passage makes no reference to the classes. In "generibus hominum" are included chiefly the "genus ingenuum" and the "genus libertinum." "Causis" applies to those conditions of the libertini, such as the possession of children of a definite age, which might serve as a ground for enrolment in a rural tribe; and "quaestibus" refers to the distinction between landowners and the "opifices et sellularii" of the city. "They changed the arrangement for voting, and drew up the tribal lists on a local basis according to the social orders, the conditions, and the callings of men;" cf. Lange, *Röm. Alt.* ii. 265 f.; p. 354 f. below.

Before the censorship of Appius Claudius Caecus, 312, military service within the census ratings was based on the possession of land, and the gradations of equipment, while they lasted, must therefore have been determined by the size of the estate reckoned in iugera.[1] Huschke[2] rightly inferred that the number of iugera marking the lower limit of each division must have been proportioned to the later money ratings, and assumed accordingly 20, 15, 10, 5, $2\frac{1}{2}$ or 2 iugera as the respective minimal holdings of the five divisions. Although absolute certainty is unattainable, most scholars accept his conclusions as probable.[3] Before the change was made in the appraisements from amount of land to money, the census gradations ceased to serve a military purpose. In the further discussion of these groups reference is therefore solely to their political character, especially as expressed in the organization of the comitia centuriata. Till the time of Marius, however, the soldiers were ordinarily recruited from the classes — that is, from the citizens who possessed at least the qualification of the lowest group.[4]

The money ratings of 312 are not recorded; we know those only of the time following 269. The ratings of the earlier date must have been in the nominally libral asses then current. For a long time, probably down to 312, the *as* remained at eleven

Among the many objections to Smith's theory these two may be mentioned: if the classes were introduced at this late historical time, (1) they would not have been ascribed to Servius Tullius; (2) they would have been adapted to the economic conditions of the second century B.C., whereas in 179 they were largely outgrown by the depreciation of the standard of value, the increase in the cost of living, and the growth of enormous estates. The *Römische Timokratie* is ably written, but its main thesis — the institution of the classes in the second century B.C. — remains unproved.

[1] P. 64.

[2] *Verf. d. Serv.* 643 f. et passim. He made a mistake however in supposing that from the beginning land was valued in terms of money.

[3] Mommsen, *Röm. Trib.* III; *Röm. Staatsr.* iii. 247 ff.; Kübler, in Pauly-Wissowa, *Real-Encycl.* iii. 2631. When the change was made from a land to a money rating, the land of the fifth class was appraised relatively higher than that of the others. Neumann, *Grundherrsch. d. röm. Rep.* 9 f., prefers to assume 16 (= 2 + 14) iugera for the highest class in order to explain the often mentioned estates of seven and fourteen iugera. But it is difficult to work out a consistent scheme on this basis. Smith, *Röm. Timokr.* 78 ff. et passim, strongly objects to the view in any form, as he doubts the existence of the Servian classes. In general he has greatly exaggerated the difficulties of their administration.

[4] Sall. *Iug.* 86; Gell. xvi. 10. 14, 16; cf. Cass. Hem. 21 (Peter, *Reliquiae*, i. 102 f.).

to nine ounces in weight, then sank rapidly to four, three, and two ounces, reaching the last-mentioned weight in or shortly before 269. In this year or the following was legally adopted the lighter *as*, weighing two ounces, or a sixth of a pound, and hence termed sextantarian, and the heavier asses still in circulation were henceforth reckoned as sesterces, which now became the unit of value.[1] Two and a half sextantarian asses made a sesterce, and four sesterces made a denarius.[2] The *as* continued to be copper, whereas the sesterce and the denarius were silver. In consequence of the use of the sextantarian *as* the ratings must have been elevated to correspond with the decline of the standard; and the result of this change is the well-known series, 100,000, 75,000, 50,000, 25,000, 11,000.[3] There can be no doubt that under the standard used in 312 the ratings were lower than those given. It is incredible that the classis should ever have been appraised so high as 100,000 asses of ten-ounce weight or even of the value of sesterces (5 oz.).[4] But the ratings of 312 have not been definitely ascertained. Assuming but one elevation between the two dates and in the proportion of 4 : 10 : : sextantarian *as* : heavy *as* or sesterce, Mommsen[5]

[1] Haeberlin, in *Riv. ital. numis.* xix (1906). 614 f.

[2] Samwer-Bahrfeldt, *Gesch. d. alt. röm. Münzw.* 176 f.; Hill, *Greek and Roman Coins*, 47, 49, n. 1; Kubitschek, in Pauly-Wissowa, *Real-Encycl.* ii. 1509 ff.; Hultsch, ibid. v. 206; Regling, in *Klio*, vi (1906). 503. Babelon, *Trait. d. mon. Grecq. et Rom.* i. 595, still holds the view that the triental *as* was introduced in 269; cf. his *Orig. d. la mon.* 376; *Mon. d. la rép. Rom.* i. 37.

[3] P. 66 f.

[4] As silver is at present worth 51¼ cents an ounce (so quoted in New York, Sept. 5, 1908), a denarius (= 7½ lb. Troy) of the coinage preceding 217 is worth by weight today 8½ cents. A more just comparison would be based on the present coined values. As a dollar contains 371¼ grains of silver, a denarius would be worth 21½ cents; or with a liberal allowance for the alloy, we might say about 20 cents. The sesterce, ¼ denarius, would therefore be equivalent to five cents. An estate of 100,000 asses of heavy weight (sesterces) would be worth about $5000, of the sextantarian standard $2000. It is hardly possible that so large a proportion of the population as was contained in the first class should average the former amount of wealth to the family. In fact the purchasing power of money was enormously higher than these equivalents indicate. In 430 the value of an ox or cow was legally set at 100 libral asses and of a sheep at ten. Reckoning a beef at the low modern value of $45, and a sheep at $4.50, we obtain a value of 45 cents for the libral *as*, or 22½ cents for one of 5 oz. weight (sesterce), which would give the denarius a purchasing power of 90 cents.

[5] *Röm. Staatsr.* iii. 249. In his *History* (Eng. ed. 1900), iii. 50, he expresses some doubt as to the numbers.

concludes that the appraisements of 312 were 40,000, 30,000, 20,000, 10,000, and 4400 asses respectively for the five classes. The adjustment however may have been gradual, as was the decline of the standard, and the former need not have corresponded exactly with the latter. But in so far as the Romans failed to bring about this adjustment, the censors must have found it necessary continually to advance the citizens from the lower to the higher divisions.

The ratings mentioned above as established on the basis of the sextantarian standard, namely 100,000, 75,000, 50,000, 25,000, and 11,000 asses for the five classes respectively, are those given by Livy.[1] Several variations affecting the highest and lowest classes are offered by other writers. Dionysius[2] states the appraisement of the fifth class at $12\frac{1}{2}$ minae, which would be 12,500 asses. The usual explanation is that he is dealing in round numbers without especial regard to accuracy, for which reason Livy should be given the preference. It is doubtful however whether Dionysius was so inexact. More probably his estimate depended ultimately on the idea that the minimal number of iugera of the highest class was twenty-five,[3] taken in connection with the decimal ratio between the extreme classes — an interpretation which would help explain variations in the rating of the highest class to be mentioned hereafter; or with less reason we might assume that the statements of Dionysius and Livy represent earlier and later conditions.[4] The limit of 400 drachmas given by Polybius[5] proves a lowering of the minimal rating between 269 and the publication of his history.[6] It may have been made in 217, when the money system was again changed. As Polybius probably considered the drachma, or denarius, to be worth ten asses,[7] the limit which he mentions

[1] I. 43; cf. p. 66. [2] IV. 17. 2. [3] Plut. *Popl.* 21.

[4] The view of Goguet, *Centuries*, 29 (following Niebuhr), that Livy has made a mistake, is not so likely.

[5] VI. 19. 2: (All must serve in war) πλὴν τῶν ὑπὸ τὰς τετρακοσίας δραχμὰς τετιμημένων· τούτους δὲ παριᾶσι πάντας εἰς τὴν ναυτικήν. That it was the minimal rating of the fifth class, and not a still lower rating for military use only, is proved by a statement of Sall. *Iug.* 86, that till the time of Marius the soldiers were drawn from the classes. [6] Cf. Mommsen, *Röm. Staatsr.* iii. 251.

[7] Commercially the denarius was then, after 217, worth sixteen asses; Hultsch, in Pauly-Wissowa, *Real-Encycl.* v. 209.

would be 4000 asses. Cicero states the minimal limit at 1500 asses,[1] and a still lower sum of 375, mentioned by Gellius,[2] marked the line of division between the taxable proletarians and the capite censi, who were exempt from taxation. As the differentiation between the two groups last named must have been effected before 167, when the Romans were relieved of the tributum,[3] the rating given by Cicero could not have been later than that vouched for by Polybius. The limit of 4000 asses, accordingly, had reference merely to military service, whereas 1500 marked at once the political and tributary line of separation between the fifth class and the taxable proletarians.[4] The limit of 375 asses, on the other hand, was far below the fifth class, and had nothing to do with it.[5] The relation of these numbers to one another may be summarized as follows: Those assessed at 4000 or more asses belonged to the fifth class, enjoyed the political rights of that class, and were subject to military service as well as to taxation (tributum); those rated at 1500–4000 asses also belonged to the fifth class, enjoyed the political rights of that class, and were subject to taxation but exempt from military service; those rated at 375–1500 asses were proletarians, below the fifth class but subject to taxation; those rated below 375 asses, the capite censi, were exempt from taxation.

As regards the rating of the highest class, the elder Pliny[6] states it at 110,000 asses, which may be a copyist's error for 100,000 or for 120,000; the estimate of Paulus Diaconus[7] is 120,000 and of Gellius[8] 125,000. If the manuscripts have correctly preserved these numbers, they may represent computations based on a varying number of iugera, from twenty-two to twenty-five[9] at the rate of 5000 asses a iugerum — a valua-

[1] Cic. *Rep.* ii. 22. 40; Gell. xvi. 10. 10. [2] XVI. 10. 10.

[3] Cf. Kübler, in Pauly-Wissowa, *Real-Encycl.* iii. 1522.

[4] This interpretation differs slightly from that of Mommsen, *Röm. Staatsr.* iii. 237.

[5] In like manner those possessing above 100,000 asses were at times divided into groups for the distribution of military burdens according to wealth; cf. Livy xxiv. 11. 7–9. This too has no reference to the organization of the comitia.

[6] *N. H.* xxxiii. 3. 43: "Maximus census $\overline{CX}$ assium fuit illo (Servio) rege, et ideo haec prima classis." [7] Fest. ep. 113. [8] VI (VII). 13.

[9] Plut. *Popl.* 21; Huschke, *Verf. d. Serv.* 164.

tion which may have been given in the original annalistic source (Fabius Pictor). From the fact that Pliny assigns this rating to Servius as author, and that Gellius speaks of it in the past, we must infer that it was not due to a relatively late change. Indeed the rating must have remained unaltered to the time of Polybius,[1] who states that those appraised at 10,000 drachmas wore the cuirass — according to Livy[2] and Dionysius,[3] the distinctive equipment of the first class.[4] In the same age the Voconian law, 169, provided that a man registered by the censors as worth 100,000 asses or more should not bequeath his property to a woman.[5] While speaking in favor of the measure the elder Cato expounded the distinction between the classici and those who were "infra classem."[6] Strictly following Cato's definition, Gellius[7] explains the classici as those of the first class in contrast with the members of the lower classes, who are infra classem. Evidently the classici are to be identified with those rated at 100,000 asses, as given by Gaius.[8] The sum of 100,000 sesterces, in place of asses, represented by later writers[9] as the one fixed by this law, is due either to a late interpretation or to

[1] VI. 23. 15. [2] I. 43. 2. [3] IV. 16. 2.

[4] After the adoption of the *as* of an ounce weight in 217, sixteen asses of this standard were considered equivalent to a denarius or a drachma, which would give a rating of 160,000 asses for those who wore the cuirass. But the military pay was still reckoned at ten asses to the denarius (Pliny, *N. H.* xxxiii. 3. 45); the censors seem to have used the same ratio (Livy xxxix. 44. 2 f. compared with Plut. *Cat. Mai.* 18); and it is therefore highly probable that in this statement Polybius intended to express in drachmas the value of 100,000 asses. Taken in its entirety, the passage sufficiently proves that reference is to the highest class; the majority (οἱ πολλοί) of soldiers, he says, have breastplates, but those rated above 10,000 drachmas wear cuirasses. If, as Belot, *Rév. écon. et mon.* 77 ff., imagines, the sum of 100,000 asses fell below the rating of the lowest class, there would hardly have been a soldier without the cuirass.

[5] Gaius ii. 274. That registration was necessary is proved by Cic. *Verr.* II. i. 41. 104 ff. By the word "censi" Cicero does not mean to designate any group or division of citizens; he simply refers to the fact of registration. P. Annius Asellus, of whom he speaks, had not been registered, or in any case at that sum, and hence was not technically liable to the law; but the value of his estate could be ascertained by authority of a court of justice, according to Greenidge, *Leg. Proced.* 95 f. Mommsen held the opinion, on the contrary (*Abhdl. d. Akad. d. Wiss. zu Berlin*, 1863. 468 f.), that the incensi were absolutely free from the law.

[6] P. 85 above.

[7] VI (VII). 13. For his rating of 125,000 asses for the first class, see p. 89.

[8] N. 5 above. [9] Dio Cass. lvi. 10. 2; Psued. Ascon. 188.

an amendment.[1] The minimal qualification of the first class must therefore have continued unchanged from 269 to the passing of the Voconian law, 169, and the composition of the *History* of Polybius.[2] From the latter event to the tribuneship of Tiberius Gracchus little time was left for an increase, which certainly the Gracchi and their successors would take no interest in bringing about. Further depreciation in the weight of the *as*, by the reduction to a half ounce through the Papirian law of 89,[3] had no effect on the valuation, as the standard was the silver sesterce, the *as* having merely the fiduciary value of a quarter sesterce. Apart from the accounts of Livy and Dionysius already considered, no reference is made to the valuation of the intermediate classes, unless it be a passage in Livy[4] to the effect that freedmen possessing country estates worth at least 30,000 sesterces were enrolled in the rural tribes by the censors of 169, which is interpreted by Mommsen[5] to refer to the qualification of the second class. This is true if, as has been assumed above, the censors still reckoned two and a half asses to the sesterce.[6]

VII. *Belot's Theory as to the Ratings*

Notice must be taken of a theory proposed by Belot,[7] that at the time of the First Punic War, owing to an economic revolution which enhanced prices, and to the decrease in the weight of the *as*, the five ratings as stated by Dionysius for the earlier period were multiplied by ten, giving for the future 1,000,000, 750,000, 500,000, 250,000, 125,000 asses for the five classes respectively.[8] The theory is supported with remarkable learning and skill. There can be no doubt as to the lowering of the weight of the *as* or of the economic revolution which increased prices. Large valuations of estates such as he mentions are

[1] Cf. Mommsen, *Röm. Staatsr.* iii. 249, n. 4; Greenidge, *Leg. Proced.* 95.

[2] The part containing this reference was not essentially later than the enactment of the Voconian law (p. 361).

[3] P. 403.

[4] XLV. 15. 2.

[5] *Röm. Staatsr.* iii. 249, n. 2.

[6] P. 90, n. 4.

[7] First offered in his *Histoire des chevaliers*, i (Paris, 1866), and afterward defended in his *Révolution économique et monétaire . . . à Rome* (1885).

[8] Cf. *Rév. écon. et mon.* 82.

found in the sources. For example in 214 the government ordered[1] that —

Those rated at 50,000– 100,000 asses should furnish one sailor.
Those rated at 100,000– 300,000 asses should furnish three sailors.
Those rated at 300,000–1,000,000 asses should furnish five sailors.
Those rated at above 1,000,000 asses should furnish seven sailors.
Senators should furnish eight sailors.

Belot's attempt to identify the highest of these appraisements with the rating of the first class is unsuccessful, as will immediately appear. The object of the order issued by the government in 214 was to provide crews for the fleet of that year. Although the hundred and fifty ships to be manned[2] seem to have been triremes, we may consider them quinqueremes so as not to underestimate the number of men necessary. Reckoning 375 men to the ship,[3] we should have 56,250 men for the entire fleet. But according to Belot[4] there were 22,000 knights at this time, whose census rating was 1,000,000 asses, and who accordingly would have to furnish seven men each for the navy, which would amount to 154,000, or more than enough to man three such fleets as that of the year under consideration. But as the knights constituted only a twelfth of the total number of registered citizens of that period,[5] most if not all of whom must according to Belot have been assessed at 50,000 or above, we shall be obliged at least to double the 154,000 sailors furnished by the knights to obtain the whole number demanded by the government. The absurdity of the result condemns the premises. The minimal census of the knight could not have been materially if at all above 100,000 asses,[6] and the great mass of citizens must have been rated below that sum. Other features of his theory need not be considered here. The truth is that the great accumulation of wealth benefited but few; and notwithstanding the advance in the money value of prop-

[1] Livy xxiv. 11. 7 f. [2] Ibid. § 5. [3] Marquardt, *Röm. Staatsv.* ii. 498 f.

[4] *Rév. écon. et mon.* 50. The Roman and Campanian (cives sine suffragio) knights together amounted to 23,000; Polyb. ii. 24. 14.

[5] About 270,000 in 220; Livy ep. xx.

[6] Even with this understanding we shall have to assume for the requisition of 214 a division between 100,000 and 300,000 — those rated at 100,000–200,000 asses furnishing two and those at 200,000–300,000 asses three sailors. Otherwise the number of sailors will be greatly in excess of the need.

erty, the mass of people remained so poor that the state could not disturb the census ratings, however out of harmony with the new conditions they seem to have become. No suspicion should be thrown on the continuance of these small valuations by the circumstance that occasionally the state compelled the wealthy to contribute to the burden of war according to their ability, as in 214, and increased the penalties for the crimes and misdemeanors which the rich and powerful were wont to commit.[1]

VIII. *The Post-Servian Equites*

The classes, as developed after Servius, have now been considered sufficiently for an appreciation of their relation to the comitia centuriata. It remains to discuss from the same point of view the post-Servian alterations in the equestrian organization.

In the earliest period when the warriors in general equipped themselves at their own expense,[2] the equites provided their own horses. But in time as the patricians ceased to be the only wealthy class in the community, and as they began to lose their political advantages, their duty of keeping one or two horses came to be felt as onerous, and some means of lightening it was sought for. The only private property which was free from the burden of supporting military service was that of widows and orphans. The government determined accordingly to levy a regular contribution on this class of estates in the interest of the equites. The eques was allowed ten thousand asses, or one thousand denarii (aes equestre), with which to purchase his horse or horses for the ten years of service and two thousand asses (aes hordearium) annually for maintenance.[3] He was not paid the money in advance, but was given security for the required sums,[4] which were gradually to be made good from the special kind of tax here described. When these equestrian funds were first granted cannot be absolutely determined. Cicero[5] assigns their institution to Tarquinius Priscus, Livy[6] to Servius, Plu-

[1] Similar conditions exist at present in America. The monstrous luxury of the few and the heavy fines recently imposed on the Standard Oil Company do not prove all Americans to be wealthy.

[2] P. 61 f.

[3] Livy i. 43. 9; Cic. *Rep.* ii. 20. 36; Fest. ep. 81, 221; Gaius iv. 27.

[4] Gaius iv. 27.

[5] *Rep.* ii. 20. 36.

[6] I. 43. 9.

tarch[1] to Camillus in the year of his censorship, 377. For obvious reasons the earlier dates are suspicious, whereas the last has the advantage of connecting the institution of these funds with the general movement for the public support of military service. When in the war with Veii regular military pay was introduced, the eques on account of his more burdensome duty, perhaps too because of his higher rank, was allowed three times the pay of the legionary.[2] It was afterward decided to deduct the aes hordearium, probably also the aes equestre, from his pay.[3] Meanwhile as wars were waged on an ever increasing scale, the patricians, who were dwindling in number, could not furnish all the cavalry needed. This want was especially felt in the struggle with Veii, whereupon wealthy plebeian youths[4] came forward and offered to serve with their own horses.[5] This is the first known instance of voluntary equestrian duty, doubtless often repeated at crises during the remainder of the republican period. In the first case at least the state provided for the keep of the horses. The volunteers were of the same grade of wealth as the conscripts; they were held in equal honor,[6] and most probably their years of voluntary service were counted in with their regular duty in making up the required number.[7] Service equo privato could also be imposed as a punishment. The only known instance, however, was that required by the censors of 209 of the equites who had disgraced themselves at

[1] *Cam.* 2. This statement is valuable notwithstanding Kubitschek, in Pauly-Wissowa, *Real-Encycl.* i. 683.

[2] Payment is mentioned by Livy v. 7. 12 (403) but triple pay is first spoken of in ch. 12. 12 (400); cf. Polyb. vi. 39. 12; Fest. 234. 26.

[3] Polyb. vi. 39. 15. The statement of Varro, *L. L.* viii. 71 ("Debet igitur dici . . . non equum publicum mille assarium esse, sed mille assariorum"), seems to signify that in practice the cost of a public horse meant a payment to the eques of a thousand asses a year; cf. Gerathewohl, *Die Reiter und die Rittercent.* 49 ff., whose interpretation is preferable to that of Mommsen, *Röm. Staatsr.* iii. 257, n. 5. The fact that the support of one knight was considered equal to that of three legionaries (Livy xxix. 15. 7) is further evidence that the triple pay covered the purchase and keep of the horse. Reference in Livy vii. 41. 8, may be to the sums (aera) for the purchase and keep of the horse; cf. Mommsen, *Röm. Staatsr.* iii. 257, n. 3.

[4] Dionysius Hal. vi. 44. 2, assigns the first recruiting of the equites from the plebeians to the year 494, dating the event about a century too early; cf. Mommsen, *Röm. Staatsr.* iii. 478, n. 1.

[5] Livy v. 7. 5.

[6] All this may be gathered from Livy v. 7. 4–13; cf. Gerathewohl, *Die Reiter und die Rittercent.* 16 ff.

[7] Polyb. vi. 19. 2; Livy xxvii. 11. 14.

Cannae. Their horses were taken from them, their campaigns equo publico were not counted to their credit, but they were required to serve ten years equis privatis.[1] These are the only instances of service with private horses mentioned in history. In all ancient literature is no suggestion that the equites equo privato formed a rank by themselves or were an institution.[2] It should also be said that the injustice of furnishing some with horses and of compelling others to go to war at their own expense, unless by way of punishment, was contrary to the spirit of the constitution. This conclusion is supported by the elder Pliny's[3] definition of the military equites, which makes the public horse an essential. From the time therefore when the state began to support the mounted service in the way described above, the equites equis publicis continued to be the only regular citizen horsemen.

The number of equites with public horses is approximately determined for any time by the number of legions then enrolled. The Servian phalanx, as has been noted,[4] consisted of two legions, which remained the normal number through the fifth century. But in the wars with Samnium and Pyrrhus Rome was able regularly to support four legions.[5] The military force could not have been doubled before the incorporation of the Veientan territory early in the fourth century;[6] most probably the enlargement belongs to still later time. The increase in the

[1] Livy xxvii. 11. 14, 16. This passage does not refer to those who avoided duty equo privato, as Mommsen, *Röm. Staatsr.* iii. 478, n. 2, supposes. Those were punished who were qualified to serve equo publico but had avoided military duty altogether. Gerathewohl, ibid. 20 f., believes that Livy has made a mistake in assigning this judgment to the censors of 209, as it would much better suit the conditions of 214.

[2] The credit of establishing this fact beyond a doubt is due to Gerathewohl, *Die Reiter und die Rittercent.* 14–34.

[3] *N. H.* xxxiii. 1. 30: "Equitum nomen subsistebat in turmis equorum publicorum;" cf. Fest. ep. 81: "Equitare antiqui dicebant equum publicum merere."

[4] P. 75.

[5] There were four legions each with 4000 infantry and 300 horse at the opening of the First Punic War; Polyb. i. 16. 2. Four legions fought against Pyrrhus at Asculum, 279; Dion. Hal. xx. 1. This was the normal number for the Samnite wars; cf. Mommsen, *Röm. Staatsr.* iii. 477.

[6] Two legions of juniors was the maximal limit of Rome's military strength during the period of twenty-one tribes; cf. p. 77, 84. The incorporation of the Veientan territory, 387, could not at once have doubled this force.

infantry required a corresponding enlargement of the mounted service. At least twelve hundred equites were henceforth required for active duty. Making allowance for reserves and ineffectives, the government raised the number of equites equo publico to eighteen hundred. The twelve new centuries were open alike to patricians and plebeians, whereas the old six remained for a time exclusively patrician. This seems to have been the condition at the opening of the first war with Carthage. During the Punic wars the number varied greatly, sometimes reaching a total of more than five thousand in the field, not counting reserves.[1] After the war with Hannibal the state, drained of men and money, allowed the cavalry to dwindle.[2] Viewing this condition with alarm, the elder Cato[3] urged that the number should be increased, and that a minimal limit be fixed at 2200. Probably at the same time he proposed that the legion should be strengthened. His measure must have been adopted, for after his censorship we find the legion regularly consisting of 5200 foot and 300 horse.[4] Under Augustus there were times when 5000 equites[5] equo publico took part in the parade which he revived.[6] As no reason can be found why Augustus should suddenly increase this class, we must conclude that there were probably about 5000 equites equo publico in the late republic.

As long as the cavalry remained exclusively patrician, a census qualification was precluded. Though Cicero and Livy refer the equestrian census to Servius Tullius, their vagueness

[1] Livy xxv. 3. 1–7; cf. Gerathewohl, *Die Reiter und die Rittercent.* 54. The sources do not suggest that the number after reaching eighteen hundred remained unalterable. In Cic. *Rep.* ii. 20. 36 ("Deinde equitum ad hunc morem constituit, qui usque adhuc est retentus") reference is not to number but to character; Gerathewohl, ibid. 8 f. Mommsen's interpretation (*Röm. Staatsr.* iii. 259, n. 5) is therefore wrong.

[2] In 200 the seven legions contained twenty-one hundred equites or fewer; Gerathewohl, *Die Reiter und die Rittercent.* 56.

[3] *Orat.* lxiv: "Nunc ego arbitror oportere restitui (Mommsen's emendation 'institui' is unnecessary), quin minus duobus milibus ac ducentis sit aerum equestrium." Mommsen, *Röm. Staatsr.* iii. 259, wrongly holds the opinion that the measure failed to pass.

[4] See citations collected by Gerathewohl, ibid. 56, n. 1.

[5] Dion. Hal. vi. 13. 4: Ἔστιν ὅτε shows that the number varied; cf. Madvig, *Röm. Staat.* i. 171.

[6] Suet. *Aug.* 38.

on this point shows that they lacked definite information.[1] It must have been introduced at the time when the patriciate ceased to be an essential qualification, when the levy came to be made on the basis of wealth rather than of blood. This change should be assigned to the early part of the fourth century B.C.[2] For a time the census was that of the first class.[3] In 214 it was still 100,000 asses, or not much above, as has already been proved.[4] In the late republic and under the emperors the minimal rating was 400,000 sesterces.[5] When it was raised to this amount is unknown.

I. The Early Graeco-Italian Phalanx: Busolt, *Griechische Geschichte*, i, ii (see Contents); Bauer, A., *Griechische Kriegsaltertümer;* Droysen, H., *Kriegsalterthümer der Griechen*, in Hermann's *Lehrb. der griech. Antiquitäten*, ii. 1–74; Gilbert, *Constitutional Antiquities of Sparta and Athens* (see Index and Contents); Lammert, E., *Geschichtliche Entwickelung der griech. Taktik*, in *N. Jahrb. f. kl. Alt.* iii (1899). 1–29; *Die neuesten Forschungen auf antiken Schlachtfeldern im Griechenland*, in *N. Jahrb. f. d. kl. Philol.* xiii (1904). 195–212, 252–79, contains some matters of interest for the present subject, though it treats mainly of the time after Alexander; Fröhlich, F., *Beiträge zur Kriegsführung und Kriegskunst der Römer zur Zeit der Republik;* Schiller, *Röm. Kriegsaltertümer*, in Müller's *Hdb. d. kl. Altwiss.* iv. 707 ff.; on earlier literature, 714 f., 728 f., 733, 737, 741, 744; Leinveber, A., *Die Legion von Livius*, in *Philol.* lxi. N. F. xv (1902). 32–41, a specialist in military science; Nitzsch, K. W., *Das Verhältniss von Heer und Staat in der röm. Republik*, in *Hist. Zeitschr.* vii (1862). 133–58; Liers, H., *Kriegswesen der Alten;* Delbrück, *Geschichte der Kriegskunst im Rahmen der politischen Geschichte*, bks. i, iv, best authority; *Die römische Manipular-*

[1] Cic. *Rep.* ii. 22. 39; Livy i. 43. 8 f.; Dion. Hal. iv. 18. 1. High birth and great wealth are emphasized, but no definite rating of the class is given. Their treatment of the subject is compatible with the view that the knights were then patrician — a view however which these writers did not have clearly in mind. Livy's statement (iii. 27. 1) that a certain patrician served in the infantry because of his poverty harmonizes well with the same view; for as the aes equestre and hordearium were not yet introduced, a poor patrician would be unable to own and keep a horse. Those scholars therefore seem to be wrong who, like Grathewohl, ibid. 67, following Rubino, in *Zeitschr. f. d. Altertumswiss.* iv (1846). 219, refer the equestrian census to Servius Tullius.

[2] P. 94. It is for about this time (403) that Livy, v. 7. 5, first refers definitely to an equestrian census.

[3] This fact is most clearly stated by Dion. Hal. vii. 59. 3, and is confirmed by Cic. *Rep.* ii. 22. 39.; cf. Pliny, *N. H.* xxxiii. 3. 43; for further evidence, see Belot, *Rév. écon. et mon.* 5 ff.

[4] P. 92.

[5] Hor. *Ep.* I. i. 57; Pliny, *N. H.* xxxiii. 2. 32; Mart. iv. 67; v. 23, 25, 38; Pliny, *Ep.* I. 19. 2; Juv. i. 105; v. 132; xiv. 326; Suet. *Caes.* 38.

taktik, in *Hist. Zeitschr.* N. F. xv (1884). 239–64 ; Niese, B., *Ueber Wehrverfassung, Dienstpflicht, und Heerwesen Griechenlands*, ibid. xcviii (1907). 263–301, 473–506 ; Arnim, H., *Ineditum Vaticanum*, in *Hermes*, xxvii (1892). 118–30, the portion of Greek text used is on p. 121 ; Wendling, E., *Zu Posidonius und Varro*, in *Hermes*, xxviii (1893). 335–53, on the source of the *Ined Vat.*; Bruncke, H., in *N. Philol. Rundschau* (1888) 40–4 ; Müller-Deecke, *Etrusker*, i. 364–72 ; Müller, J. J., *Studien zur röm. Verfassungsgeschichte*, in *Philol.* xxxiv (1876). 96–136 ; Helbig, *Sur les attributs des saliens*, in *Mémoires de l'académie des inscriptions et belles-lettres*, xxxvii [2] (1905). 205–76 ; on the same subject, in *Comptes rendus de l'acad.* etc. 1904. ii. 206–12.

II. The Military and Political Centuries and Classes: Niebuhr, B. G., *Röm. Geschichte*, i. 451–511, Eng. 197–236 ; Schwegler, *Röm. Geschichte*, I. bk. xvii ; Huschke, Ph. E., *Verfassung des Königs Servius Tullius*, especially chs. iv, vii, viii ; Peter, C., *Epochen der Verfassungsgeschichte der röm. Republik*; *Studien zur röm. Geschichte*, controverts Mommsen's view as to the military character of the Servian institutions ; Mommsen, *History of Rome*, bk. I. ch. vi ; *De apparitoribus magistratuum romanorum*, in *Rhein. Mus.* N. F. vi (1846). 1–57, includes some account of the accensi ; *Röm. Tribus*, 59–72, 121–143, 160 ff. ; *Röm. Staatsr.* iii. 240 ff. ; *Röm. Forschungen*, i. 134–40 ; Willems, P., *Droit public Rom.* 40, 43, 84–92 ; Mispoulet, J. B., *Institutions politiques des Romains*, i. 203–7 ; Lange, L., *Röm. Altertümer*, i. 522–66 ; *Cicero über die servianische Centurienverfassung*, in *Kleine Schriften*, i. 227–234 ; Herzog, *Geschichte und System der röm. Staatsverfassung*, i. 37–43, 1066 f. ; Ihne, W., *History of Rome*, bk. I. ch. vii ; *Early Rome*, 51–4, 79, 132–9 ; *Entstehung der servianischen Verfassung*, in *Symbola Philologorum Bonnensium* (1864–1867). 629–44 ; Breda, *Die Centurienverfassung des Servius Tullius*; Genz, H., *Servianische Centurien-Verfassung*; Soltau, W., *Altröm. Volksversammlungen*, 229–96 ; Ullrich, J., *Centuriatcomitien*; Le Tellier, M., *L'Organisation centuriate et les comices par centuries*, ch. i ; Hallays, A., *Les comices à Rome*; Morlot, É., *Les comices électoraux*, ch. iii ; Moye, M., *Élections politiques sous la république Rom.* chs. iii, iv, vii ; Müller, ibid. ; Neumann, K. J., *Grundherrschaft der röm. Republik, die Bauernbefreiung, und die Entstehung der servianischen Verfassung*, speculative but very suggestive ; Greenidge, A. H. J., *Roman Public Life*, 65–76 ; *Legal Procedure of Cicero's Time*, 307 ff. ; Schott, P. O., *Röm. Geschichte im Lichte der neuesten Forschungen*; Smith, F., *Röm. Timokratie* ; Pardon, *De aerariis*; Maue, H., *Der praefectus fabrum*; Bloch, A., *Le praefectus Fabrum*, pt. ii, in *Musée Belge*, ix (1905). 352–78 ; Babelon, E., *Monnaies de la république Rom.* I. pts. i, ii ; *Traité des monnaies Grecq. et Rom.* i ; *Origines de la monnaie*; Samwer-Bahrfeldt, *Geschichte des alten röm. Münzwesens*; Hill, G. F., *Greek and Roman Coins*, 45–9 ; Regling, *Zum älteren röm. und ital. Münzen*, in *Klio*, vi (1906). 489–524 ; Belot, É., *De la révolution économique et monétaire . . . à Rome*; articles in Pauly-Wissowa, *Real-Encycl.*: *Accensi*, i. 135–7 (Kubitschek) ; *Adscriptivi*, i. 422 (Cichorius) ; *Adsiduus*, i. 426 (Kubitschek) ; *Aerarius*, i. 674–6 (idem) ; *As*, ii. 1499–1513

(idem); *Capite censi*, iii. 1521–3 (Kübler); *Census*, iii. 1914–24 (Kubitschek); *Centuria*, iii. 1952–62 (Kübler, Domazewski, Kubitschek); *Classis*, iii. 2630–32 (Kübler); *Collegium*, iv. 380–480 (Kornemann); *Comitia*, iv. 679–715 (Liebenam); *Cornicines*, iv. 1602 f. (Fiebiger); *Denarius*, v. 202–15 (Hultsch); articles in Daremberg et Saglio, *Dict.: Accensus*, i. 16 ff. (Humbert and others); *As*, i. 454–64 (Lenormant); *Census*, ii. 1003–17 (Humbert); *Centuria*, ii. 1017 (idem); *Classis*, i. 1224 f. (idem); *Comices centuriates*, s. *Comitia*, ii. 1378 ff. (idem); articles in Ruggiero, E., *Dizionario epigrafico: Accensus*, i. 18–21; *Aerarius*, i. 311–3; *Aes*, i. 313 f.; *Centuria*, ii. 183–9; *Censor*, ii. 157 ff.; *Census*, ii. 174–7; *Cornicines*, ii. 1213–6; *Fabri*, iii. 4–18 (Libenam); Olcott, *Thes. ling. lat. ep.* i. 51: Accensus; Pais, E., *Ancient Legends of Roman History*, ch. vii.

III. The Equites: Niebuhr, ibid. i. 415–22, Eng. 197–200; Schwegler, ibid. i. 756–60; Lange, *Röm. Alt.* i. 444–7, 523, 547–51; *Recension über K. Niemeyer, De equitibus romanis commentatio historica*, in *Kleine Schriften*, i. 113–37; Mommsen, *Röm. Staatsr.* ii. 397–400; iii. 106–9, 253–62; Madvig, J. N., *Verfassung und Verwaltung des röm. Staates*, i. 155–82; Mispoulet, J. B., *Études d'institutions Rom.* 151–226; Bloch, G., *Origines du sénat Rom.* 46–95; Marquardt, J., *Historiae equitum romanorum libri iv*; Gomont, M. H., *Chevaliers Rom. depuis Romulus jusqu'à Galba*; Niemeyer, K., *De equitibus romanis commentatio historica*; Rubino, J., *Ueber das Verhältniss der VI Suffragia zur röm. Ritterschaft*, in *Zeitschr. f. d. Altertumswiss.* iv (1846). 212–39; Bertolini, C. I., *I celeres ed il tribunus celerum*; Belot, É., *Histoire des chevaliers Rom.* 2 vols.; Gerathewohl, H., *Die Reiter und die Rittercenturien zur Zeit der röm. Republik*, valuable; Kubitschek, J. W., *Aes equestre*, in Pauly-Wissowa, *Real-Encycl.* i. 682–4; Kübler, *Equites Romani*, ibid. vi. 272–312; Martin, A., *Equites* (Greek), in Daremberg et Saglio, *Dict.* ii. 752–71; Cagnat, R., *Equites* (Roman), ibid. ii. 771–89; Helbig, W., *Observations sur les ἱππεῖς Athéniens*, in *Comptes rendus de l'academie des inscriptions et belles-lettres*, 1900. 516–22; *Les ἱππεῖς Athéniens*, in *Mémoires de l'acad.* etc. xxxvii[1] (1904). 157–264; *Die ἱππεῖς und ihre Knappen*, in *Jahreshefte des österr. archäol instituts*, viii. 2. 185–202; Peterson, E., *Zu Helbigs ἱππεῖς*, etc., ibid., 125 f.; Helbig, *Zur Geschichte des röm. Equitatus, A. Die Equites als berittene Hopliten*, in *Abhdl. d. bayer. Akad. d. Wiss.* xxiii (1905). 267–317; *Die Castores als Schutzgötter des röm. Equitatus*, in *Hermes*, xl (1905). 101–15; *Contribution à l'histoire de l'equitatus*, in *Comptes rendus de l'acad. des inscriptions et belles-lettres*, 1904. ii. 190–201; Pellegrini, G., *Fregi arcaici etruschi in terracotta*, etc., in Milani, L. A., *Studi e materiali archeol. e numis.* i. 87–118.

CHAPTER V

THE AUSPICES

I. *Auspicia Privata*

Auspices (auspicia) were signs sent by the gods through which they declared their will to men. Those given in answer to prayer were impetrativa (or impetrita), those sent unasked oblativa. The first were necessarily favorable; the second might be either favorable or the contrary.[1] To take or to hold auspices was to seek such signs in due form. Auspicia, or the singular auspicium, also designated the right or the power to perform the function. They were not a means of prophecy of future events but of ascertaining whether the deity approved a proposed action.[2] With reference to their object and to the persons qualified to take them, they were of two kinds, private and public. Whereas the public auspices, taken in behalf of the state, belonged exclusively to magistrates, the private were open to all;[3] and in early times a Roman always resorted to them before beginning any important business.[4] Though it was permissible to consult any deity,[5] the greatest weight attached to the approval of the supreme god Jupiter.[6]

[1] Serv. *in Aen.* iii. 89; vi. 190; xii. 259.

[2] Cic. *Div.* 16. 29 f.: "Dirae, sicut cetera auspicia, ut omina, ut signa, non causas adferunt, cur quid eveniat, sed nuntiant eventura, nisi provideris." The last statement means only that a misfortune will happen, if an evil omen is unheeded. Cic. *Div.* ii. 33. 70: "Non enim sumus ii nos augures, qui . . . futura dicamus;" cf. Lange, *Röm. Alt.* i. 331; Aust, *Relig. d. Römer*, 198.

[3] Serv. *in. Aen.* iii. 20: "Auspicari enim cuivis . . . licet."

[4] Cic. *Div.* i. 16. 28: "Nihil fere quondam maioris rei nisi auspicato ne privatim quidem gerebatur, quod etiam nunc nuptiarum auspices declarant, qui re omissa nomen tantum tenent;" 46. 104; Val. Max. ii. 1. 1. On the nuptial auspices, see De Marchi, *Cult. priv. di Rom.* i. 152–5.

[5] Romulus consulted the rest of the gods along with Jupiter; Dion. Hal. ii. 5. 1.

[6] The public auspices were Jupiter's alone; Cic. *Leg.* ii. 8. 20. So were the auspical chickens; *Div.* ii. 34. 72; 35. 73; cf. Mommsen, *Röm. Staatsr.* i. 77, n. 2. In historical time the sign called for was Jupiter's lightning; Cic. *Div.* ii. 18. 42;

The plebeians, who as long as they were excluded from the magistracies were necessarily debarred from the auspicia publica, enjoyed equally with the patricians all private rights of religion; in fact if the nobles had wished, they possessed no legal means of preventing the holding of auspices or the performance of any other sacred rite in private plebeian houses. Not only is it stated that all had a right to auspicate,[1] but the formula for summoning troops given by Cincius[2] implies that the soldiers, who were mainly plebeian, were accustomed to perform the rite. We find accordingly the elder Cato, a plebeian, attending to the ceremony in his own home.[3] The patricians, however, who believed themselves to be nearer and dearer to the gods than were the plebeians, and who in their struggle to keep themselves a closed caste and the offices barred against the lower social class, declared that conubium if granted would disturb the private as well as public auspices.[4] But this assertion need not signify that the plebeians had no private auspices, it might indicate merely a difference between the plebeian and patrician ceremonies, naturally implying the superiority of the latter. Again when on a certain occasion according to Livy a tribune of the plebs inquired of a patrician why a plebeian could not be made consul, the reply was that no plebeian had the auspices, reiterating that the decemvirs had forbidden conubium to prevent the disturbance of the ceremony by uncertainty of birth.[5] Reference might here be simply to the auspicia publica, with which alone the consul was concerned. However this may be, the patrician claim was indignantly repudiated by the plebeians, and the historian can say no more than that it was "perhaps true." Another passage from Livy usually interpreted in support of the theory

Vatin. 8. 20; *Phil.* v. 3. 7. The epithet Elicius, notwithstanding Varro, *L. L.* vi. 95; Livy i. 20. 7; 31. 8, does not find its explanation in the auspices; Aust, in Roscher, *Lex. Myth.* ii. 656 ff.; Wissowa, *Relig. u. Kult. d. Röm.* 106.

[1] P. 100, n. 3.

[2] In Gell. xvi. 4. 4.

[3] Cato, *De sacrilegio commisso*, in Fest. 234. 30. No one could imagine Attus Navius, the swineherd, to have been a patrician, and yet he was the most famous of private augurs; Cic. *Div.* i. 17. It is significant, too, that the great authority on private auspices, P. Nigidius Figulus, author of *Augurium privatum* in several books (Gell. vii. 6. 10), was a plebeian.

[4] Livy iv. 2. 5 f.

[5] Livy iv. 6. 1 f.

that the patricians alone had private auspices represents them, before the opening of the offices to the commons, as saying, "So peculiar to us are the auspices that not only the patrician magistrates whom the people choose are elected under the auspices, but we ourselves under the sanction of the same rite without a vote of the people appoint the interrex, and we as private persons hold auspices, which they do not hold even as magistrates."[1] This passage is perfectly intelligible to one who bears in mind that in the late republic private auspices had disappeared,[2] and that therefore when the word auspicia is used without qualification by a late republican or imperial writer, it always has reference to the public ceremonies.[3] In the quotation just given, accordingly, nothing more is meant than that the patricians, who have the exclusive right to the offices, are alone competent to perform the public religious ceremonies which belong to the magistrates. Reference in the quotation to the auspices of private persons signifies that when there was no magistrate competent to hold the election of consuls, the public auspices returned to the senate, the patrician members of which proceeded under auspication to appoint an interrex for holding the elections. In this case the senatorial patricians, it was asserted, attended to the ceremony not as magistrates but as private persons, though the rites were themselves public. As distinguished from magistrates, the senators were privati. It was not, then, as mere citizens but as patrician members of the senate that they performed the rite. Further light is thrown on this subject by the fact that in the agitation for the opening of the augural and pontifical colleges to the plebeians in 300, the patricians repeated the assertion that with them alone were auspices, they alone had family (gens), they alone possessed true imperium and auspicium in peace and war.[4] This claim they had the effrontery to make despite the fact that plebeian consuls had been taking public auspices for more than

[1] Livy vi. 41. 5 f.

[2] Cic. *Div.* ii. 36. 76: "Nos, nisi dum a populo auspicia accepta habemus, quam multum iis utimur?" i. 16. 28.

[3] Rubino, *Röm. Verf.* 46, n. 2, has pointed out that the phrase auspicia publica occurs only in Livy iv. 2. 5, where he believes it to be used in a special sense. In the time of Cicero no one but an antiquarian ever thought of any other kind of auspices.

[4] Livy x. 8. 9.

sixty years. In the pride of their blood they claimed that theirs alone were strictly legal (iustum). Notwithstanding such partisan assertions the facts thus far adduced lead unmistakably to the conclusion that the plebeians equally with the patricians enjoyed the right to private auspices.[1]

II. *Auspicia Publica Impetrativa*

The right to public auspices belonged primarily to patrician magistracies[2] — those which in the early republic were filled only by patricians, but which continued to be called patrician after they were open to plebeians. All elections and appointments to such offices were auspicated;[3] and their incumbents were expected to seek the previous approval of Jupiter for every important act of their administration.[4] The king, interrex, dictator, consuls, praetors, and censors had the auspicia maxima; the others the minora.[5] The praetor, as colleague of the consuls, was elected under the same auspices with them, that is, in the same meeting of the assembly, whereas the censors, not being colleagues of the consuls, were elected under different auspices. Between magistrates who were not colleagues there could be no collision in the auspicia impetrativa; those of the censors neither strengthened nor vitiated those of the consuls or praetors, nor were strengthened or vitiated by them. In case of a conflict between colleagues, the greater auspices annulled the lesser, and equal auspices annulled each other.[6] For the exercise of a function properly belonging to a magistracy the incumbent per-

[1] The usual view, represented by Mommsen, *Röm. Staatsr.* i. 89, n. 1, is that the plebeians did not possess this right originally but acquired it later; cf. also Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2581; Di Marchi, *Cult. priv. di. Rom.* i. 233. This hypothesis not only lacks support, but is also vitiated by the fact that at the time of the supposed equalization private auspices must have been declining, as Cicero found them extinct.

The treatment of private auspices here given is supplementary to the study of the social classes made in ch. ii.

[2] Messala, in Gell. xiii. 15. 4; Fest. 157. 21; Rubino, *Röm. Verf.* 71 ff.; Bouché-Leclerq, in Daremberg et Saglio, *Dict.* i. 580.

[3] Cic. *Leg.* iii. 3. 9; Livy vi. 41. 6; viii. 23. 15 f.

[4] Mommsen, *Röm. Staatsr.* i. 96 ff.

[5] Messala, *De auspiciis*, i, in Gell. xiii. 15. 4; Bouché-Leclerq, ibid. ii. 581.

[6] Messala, ibid.

formed the ceremony at his own will and pleasure, unless expressly forbidden by a superior;[1] but one who undertook a deputed duty had to ask the auspicium of a magistrate who was competent to perform the duty in his own right. Thus the quaestor, who was not qualified by right of his office to call the comitia centuriata, found it necessary to do so in his capital prosecutions. In such a case he asked of the praetor or consul the right to hold auspices for summoning this assembly.[2] Whether the pontifex maximus held auspices in his own name, or was obliged, like the quaestor, to apply for them to a higher secular official, is unknown; at all events it was necessary for him to auspicate the comitia calata, over which he presided.[3] It seems probable that the tribunes originally did not have the right as they were not magistrates; but when they came to be so considered, they acquired the auspicium. All magistrates — necessarily including the tribunes — who convoked the senate had previously to perform the ceremony;[4] Cicero[5] seems to include the tribunes among the magistrates who had the auspicium; and as further proof the very expression "patriciorum (magistratuum) auspicia"[6] used by Messala implies the existence of "plebeiorum magistratuum auspicia." It was not the custom of the tribunes, however, to auspicate their assemblies of the plebs.[7]

[1] As when for instance the consul forbids the minor magistrate to "watch the sky" on an appointed comitial day; Gell. xiii. 15. 1: "In edicto consulum, quo edicunt, quis dies comitiis centuriatis futurus sit, scribitur ex vetere forma perpetua: ne quis magistratus minor de caelo servasse velit."

[2] *Commentarium Anquisitionis* of a quaestor, in Varro, *L. L.* vi. 91: "Auspicio operam des et in templo auspices, dum aut ad praetorem aut ad consulem mittas auspicium petitum." This passage shows that the quaestor, though asking permission, himself holds the auspices.

[3] The first alternative is held by Mommsen, *Röm. Staatsr.* i. 89, whereas Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2584, is inclined to the latter.

[4] Gell. xiv. 7. 4, 8, quoting Varro.

[5] *Leg.* iii. 3. 10: "Omnes magistratus auspicium iudiciumque habento." The previous paragraph is concerned with the tribunes, and in this citation the use of iudicium instead of imperium points to the tribunes. It is hardly possible that Cicero in his *Laws* would give the tribunes a right they did not possess.

[6] In Gell. xiii. 15. 4. Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2583, seems therefore to be incorrect in excluding the tribunes from the right.

[7] In stating that the tribunes were given the right to take auspices for their assemblies, Zonaras, vii. 19, evidently confuses the oblativa with the impetrativa. It is an

For assistance in auspication the magistrate summoned any person he pleased, who was rarely if ever a public augur.[1] An augur,[2] whether private or official, was a person who knew how to hold and to interpret auspices.[3] A college of public augurs[4] for the service of the state was established in the most primitive times. Probably comprising three members, one from each tribe, it was gradually increased till under Sulla it reached fifteen.[5] The members of the college were neither

interesting fact that according to Cicero the first college of tribunes was elected under auspices in the comitia curiata; Frag. A. vii. 48: "Itaque auspiciato postero anno tr. pl. comitiis curiatis creati sunt."

[1] Cic. *Div.* ii. 34. 71: "Hic apud maiores nostros adhibebatur peritus, nunc quilubet." As in the time of Cicero auspices had come to be a mere pretence (p. 118), an attendant without skill or scruple would best serve the magistrate's purpose. In Livy iv. 18. 6, the augurs see the omen for the dictator, but some other attendant might serve the purpose. Being a paid functionary, the bird-seer mentioned by Dion. Hal. ii. 6. 2 as assisting in an auspication could not have been a public augur; Valeton, in *Mnemos.* xviii. 406 ff.; Wissowa, *Relig. u. Kult. d. Römer*, 456, n. 8. The magistrate requested assistance in the following form: "Q. Fabi, te mihi in auspicio esse volo;" and the reply was "Audivi;" Cic. *Div.* ii. 34. 71; cf. § 72. From this formula it appears that the person summoned did not hold, but assisted in, the auspices; Lange, *Röm. Alt.* i. 338. The auspices are always said to belong not to the augurs, but to the magistrates; Cic. *Leg.* iii. 3. 10; Messala, in Gell. xiii. 15. 4. Instead of remaining with the augurs in the city the auspices followed a duly elected consul into the field; Livy xxii. 1. 6. Auspicari is strictly a function of the magistrate (cf. Varro, *Rer. hum.* xx, in Non. Marc. 92) though the word is sometimes applied to the observation made by augurs (Fest. ep. 18), whose function is properly termed augurium, augurare; Aust, *Relig. d. Römer*, 200 f.; Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2580 f.

[2] The derivation is unknown. Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2313 f., summarizes the principal theories. Probability seems to favor the view that it is a combination of the root of avis with a verbal noun meaning "to see" or the like; Walde, *Lat. etym. Wörterb.* 55.

[3] Attus Navius from his boyhood was renowned for his augural skill; Cic. *Div.* i. 17; Livy i. 36; Dion. Hal. iii. 70 f.; cf. Lange, *Röm. Alt.* i. 333. Romulus, too, is said to have been an excellent augur; Remus possessed similar skill (Cic. *Div.* i. 2. 3; 17. 30; 40. 89; Ennius, in Cic. *Div.* i. 48. 107), and in the opinion of Livy, i. 18. 6; iv. 4. 2, there was no augural college before Numa.

[4] Varro, *L. L.* v. 33; Cic. *Fam.* vi. 6. 7; *Senec.* 18. 64; Fest. 161. 20; *CIL.* vi. 503, 504, 511, 1233, 1449; x. 211; Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2314.

[5] Cic. *Rep.* ii. 9. 16; 14. 26; Livy x. 6. 7; ep. lxxxix; Marquardt, *Röm. Staatsv.* iii. 398; Lange, *Röm. Alt.* i. 334 f.; Wissowa, *Relig. u. Kult. d. Römer*, 451; also his article in Pauly-Wissowa, *Real-Encycl.* ii. 2316 f. In adding a supernumerary (Dio Cass. xlii. 51. 4) Caesar set an example extensively followed by the principes; cf. Dio Cass. li. 20. 3; Wissowa, ibid. ii. 2317.

magistrates[1] nor prophets. They were rather the wise,[2] experienced[3] keepers and expounders of a sacred science and art[4] — the "interpreters of Jupiter All-Great and Good."[5] Having to do with religion, they were sacerdotes, like the pontiffs, though not offerers of sacrifice (flamines).[6] The functions which they exercised independently of the magistrates included the inauguration of religious officials (inaugurare sacerdotes), the blessing of fields twice a year, and of the people after the close of a war.[7] In attending to such duties (auguria) only did they exercise their right to the auspices.[8] In a dependent though far more influential position they acted as the professionally skilled advisers and assistants of the magistrates in all matters of peace and war.[9] If a magistrate was not himself an augur,[10] it was of the utmost importance to have their service; for the science of discovering and interpreting the divine omens was intricate, mistakes were easy, and the slightest oversight might vitiate the whole business in hand. When in doubt as to the validity of the ceremony, either the magistrate to whom it belonged or the senate could refer the case to the college of augurs, which thereupon gave an opinion

[1] As distinguished from magistrates they were privati; Cic. *Div.* i. 40. 89.

[2] Auctor Incertus (Huschke) p. 4: "Collegium augurum ordo hominum prudentum erat, qui prodigiis publicis praeerant;" cf. Lange, *Röm. Alt.* i. 330.

[3] Cic. *Div.* ii. 34. 71 f.; cf. Livy xli. 18.

[4] Plut. *Q. R.* 99.

[5] Cic. *Leg.* ii. 8. 20; *Phil.* xiii. 5. 12.

[6] They are never called flamines, and no flamen was attached to their office; Wissowa, *Relig. u. Kult. d. Römer*, 451. The great sacerdotal colleges were more political than religious, and the college of augurs was the most thoroughly political of all; Bouché-Leclerq, in Daremberg et Saglio, *Dict.* i. 564.

[7] Cic. *Leg.* ii. 8. 20; Dio Cass. xxxvii. 24 f.; Aust, *Relig. d. Römer*, 199; Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2325–30.

[8] Fest. 333. 9: "Spectio in auguralibus ponitur pro aspectione; (data est) et nuntiatio, qui omne ius auspiciorum habent, auguribus non spectio dumtaxat, quorum consilio rem gererent magistratus, ut possent impedire, nuntiando quaecumque vidissent; privatis spectio sine nuntiatione data est, ut ipsi auspicio rem gererent, non ut alios impedirent nuntiando." — Valeton's emendation, in *Mnemos.* xviii (1890). 455 f.

[9] Cic. *Leg.* ii. 8. 21: "Quique agent rem duelli quique domi popularem, auspicium praemonento ollique obtemperanto;" cf. Lange, *Röm. Alt.* i. 332.

[10] It generally happened that both the augural and pontifical colleges were filled by statesmen, so that Cicero could lay down the principle that the sacred and political offices were held by the same persons; *Div.* i. 40. 89; cf. Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2321.

in the form of a decree. The senate then acted on the matter according to its judgment.[1] In case a law had been passed, a magistrate elected, or any public act performed against its wishes, it could inquire of the college of augurs whether the election or other act had been duly auspicated; and should a defect be alleged, the senate could annul the act or request the magistrate to resign. It required unusual courage in a man to keep himself in office in defiance of the authority of the senate and of the religious feeling of the whole people.[2] These considerations account for the great importance attaching to the presence of augurs in the comitia — a subject to be treated in another connection.[3]

The service of augurs was most needed in establishing the terrestrial templum[4] — a carefully marked out, oriented spot which the magistrate occupied while performing the rite.[5] Whereas the commander of an army generally made use of chicken auspices (signa ex tripudiis), which did not require their assistance,[6] they were doubtless always called upon to

[1] Livy iv. 7. 3; viii. 23. 14–17; xxiii. 31. 13; xlv. 12. 10; Cic. *Phil.* ii. 33. 83; *Leg.* ii. 12. 31; *N. D.* ii. 4. 11. A defect in the auspicia impetrativa was expressed by the formula "vitio tabernaculum captum esse" (Cic. *N. D.* ii. 4. 11; *Div.* i. 17. 33; Livy iv. 7. 3; Serv. *in Aen.* ii. 178), whereas the phrase "vitio creatum esse" or the like (Livy viii. 15. 6; 23. 14; xxiii. 31. 13; xlv. 12. 10; Plut. *Marcell.* 4) denoted a failure to take the auspices or to heed unfavorable omens; Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2334. On the annulment of laws through augural decrees, see Cic. *Leg.* 8. 21; 12. 31; *Div.* ii. 35. 74. The decree was no more than an opinion, on which the senate acted; Rubino, *Röm. Verf.* 88. n. 3; Aust, *Relig. d. Römer*, 201.

[2] An example of such boldness was that of C. Flaminius; Livy xxi. 63; cf. Plut. *Marcell.* 4; Zon. vii. 20. For the case of Appius Claudius Pulcher, see Livy ep. xix; Polyb. i. 52.

[3] P. 112.

[4] Cic. *Leg.* ii. 8. 21. Strictly it was the templum minus as distinguished from the templum magnum, a region of the sky; Varro, *L. L.* vii. 7; Fest. 157. 24; Serv. *in Aen.* i. 92.

[5] Varro, *L. L.* vi. 86, 91. It was always rectangular, and was usually covered with a tent; Fest. 157. 24; Serv. *in Aen.* ii. 512; iv. 200; Nissen, *Templum*, 162 ff.; Wissowa, *Relig. u. Kult. d. Römer*, 455; in Pauly-Wissowa, *Real-Encycl.* ii. 2337 ff.; Valeton, in *Mnemos.* xx (1892). 338–90; xxi. 62–91, 397–440; xxiii. 15–79; xxv. 93–144, 361–385; xxvi. 1–93; Bouché-Leclerq, in Daremberg et Saglio, *Dict.* i. 554 f.

[6] When wars were waged in the immediate vicinity of Rome the augurs could easily accompany the commander; cf. Livy iv. 18. 6; Cic. *Leg.* ii. 8. 21. But they certainly did not often go as far as Samnium; cf. Livy viii. 23. 16; ix. 38. 14. Though the augurs remained at Rome, the auspices followed the commander into the field; Livy xxii. 1. 6; p. 105, n. 1.

institute templa in or near the city.[1] For the exercise of their art they divided the world, so far as known to them, into augural districts. The central district was the city, limited by the pomerium,[2] beyond which, probably extending to the first milestone,[3] lay a zone termed ager effatus,[4] whose boundaries were marked by cippi.[5] The rest of the world within their sphere of knowledge they divided into ager Romanus, which in its larger sense included the two districts above mentioned, Gabinus, peregrinus, hosticus, and incertus.[6] For the comitia the two inner regions were alone important: (1) the auspication of assemblies held in the city had to be performed within the pomerium; (2) as often as the magistrate in passing from the city to the Campus Martius to hold the comitia centuriata crossed the pomerium,[7] or more strictly the brook Petronia,[8] he was obliged to take the special auspices of crossing. Beyond the ager effatus assemblies were not ordinarily held.

Originally the most common form of divination must have been the watching of the flight of birds, for it is from this ceremony that the word auspicium is derived.[9] Legend accordingly asserts that Romulus founded the city on the Palatine under the auspices of twelve vultures.[10] Before the end of the republic, however, all other forms of public auspicia impetrativa in the city had given way to the caelestia, especially the lightning and

[1] Livy iii. 20. 6; Aust, *Relig. d. Römer*, 201.

[2] Gell. xiii. 14. 1; Varro, *L. L.* v. 143; Wissowa, *Relig. u. Kult. d. Römer*, 456, n. 1. [3] Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2339.

[4] Serv. *in Aen.* vi. 197; Varro, *L. L.* vi. 53; Wissowa, *Relig. u. Kult. d. Römer*, 456; also his article in Pauly-Wissowa, *Real-Encycl.* ii. 2339.

[5] Varro, *L. L.* v. 143; Cic. *Leg.* ii. 8. 21; *CIL.* vi. 1233; Wissowa, *Relig. u. Kult. d. Römer*, 456 and notes. [6] Varro, *L. L.* v. 33.

[7] The elder Tiberius Gracchus vitiated the election of his successors in the consulship by forgetting to renew the auspices, when, after entering the city to preside over the senate, he recrossed the pomerium to hold the election in the Campus; Cic. *N. D.* ii. 4. 11; *Div.* i. 17. 33; cf. Tac. *Ann.* iii. 19.

[8] Fest. 250. 12; 157. 29; cf. Mommsen, *Röm. Staatsr.* i, 97, n. 1; Valeton, in *Mnemos.* xviii (1890). 209 f. The reason for the auspication on such occasions is differently stated by the authorities, but the interpretation given by Jordan-Hülsen, *Top. d. Stadt Rom*, I. iii. 472 f., that this brook marked the boundary of the city auspices, seems preferable.

[9] Avispex, auspex, bird-seer; Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2580.

[10] Livy i. 7. 1.

thunder.[1] The reason is that the heavenly signs could be most easily understood and carried greatest weight; whereas other auspices had to be held for each individual act, the celestial omens of the morning served the magistrate for all his undertakings during the entire day.[2] The effect of heavenly signs on assemblies of the people, however, was peculiar. Not only were comitia and contiones interrupted by storms;[3] not only was it impious to hold an assembly while it was lightning or thundering,[4] but even while the magistrate was auspicating at daybreak, if a flash of lightning appeared on the left — a sign favorable for every other undertaking — he dared not hold the assembly on that day.[5] Some favorable comitial sign the magistrate was supposed to perceive,[6] but what it was we do not know.

The general rule that the auspices should be taken for an act on the very spot on which the magistrate intended to perform the act applied to the comitial auspices. For meetings on the Capitoline Hill they probably used the temple of Jupiter, dedicated for all time;[7] for assemblies in the comitium the rostra, also a templum;[8] and for the comitia centuriata the president's platform in the Campus Martius.[9] Not only patrician magistrates but also tribunes of the plebs occupied templa in transacting business with the people.[10]

[1] Fest. ep. 64; Cic. *Div.* ii. 33. 71: "Haec certe quibus utimur, sive tripudio sive de caelo" (the auspicia tripudio being used in the military sphere, leaving only the auspicia de caelo for the city); cf. i. 16. 28; Mommsen, *Röm. Staatsr.* i. 79, n. 1; Aust, *Relig. d. Römer*, 203; Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2333.

[2] Dio Cass. xxxviii. 13. 3. Lightning from left to right especially in a clear sky was favorable; Dion. Hal. ii. 5. 2; Verg. *Aen.* ii. 692; vii. 141; ix. 628 (on the last, see Servius). A thunderclap was unfavorable to one entering office; xxiii. 31. 13; Plut. *Marcell.* 12; cf. Mommsen, *Röm. Staatsr.* i. 80, n. 2.

[3] Tac. *Hist.* i. 18.

[4] Cic. *Div.* ii. 18. 42.

[5] Cic. *Div.* ii. 35. 74; 18. 43; Dio Cass. xxxviii. 13. 3 f.

[6] *Censoriae Tabulae*, in Varro, *L. L.* vi. 86: "Ubi noctu in templum censor auspicaverit atque de caelo nuntium erit, praeconi sic imperato ut viros vocet."

[7] Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2585. The auguraculum was doubtless used only by the augurs, not as Mommsen (*Röm. Staatsr.* i. 103, n. 2) supposes, by the magistrates.

[8] Livy viii. 14. 12; Cic. *Vatin.* 10. 24: "In rostris, in illo inquam augurato templo ac loco."

[9] Varro, *L. L.* vi. 91; Val. Max. iv. 5. 3; Cic. *Rab. Perd.* 4. 11; Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2585 f.

[10] Valeton, in *Mnemos.* xxiii (1895). 28 ff.

Between midnight and morning[1] on the day of assembly the magistrate repaired to the templum.[2] There, placing himself on a solid[3] seat at the door, usually facing eastward, he watched the heavens (spectio). Meanwhile he first asked the attendant, who always sat near,[4] whether there was silence.[5] If the answer was affirmative, he prayed Jupiter for a sign, which he described in a formula termed legum dictio,[6] whereupon the attendant declared he saw it.[7] In case of non-appearance of the sign or of a disturbance of the observation, the auspication was deferred to another morning.[8] Before the time of Cicero, however, the ceremony had been so reduced to a pretence as practically to eliminate the possibility of failure.[9]

Both curiate[10] and centuriate[11] assemblies were auspicated. Although for the tribal assemblies the question is more difficult, it seems reasonably certain that whereas a patrician magistrate took the auspices for the comitia tributa,[12] plebeian magistrates (tribunes and aediles of the plebs) did not.[13]

As to whether contiones were auspicated we are not clearly informed. The question concerns those only which were held by patrician magistrates. The auspication of comitia necessarily extended to the contio immediately preceding.[14] It is

[1] *Censoriae Tabulae*, in Varro, *L. L.* vi. 86; Livy viii. 23. 15; x. 40. 2.

[2] The auspices had to be taken on the day the business was to be transacted, counting the day from midnight to midnight; Gell. iii. 2. 10; Consorinus xxiii. 4.

[3] Verrius, in Fest. 347. 17; Serv. *in Aen.* ix. 4; Statius, *Theb.* iii. 459. Romulus, however, stood upright; Dion. Hall. ii. 5. 1. [4] P. 105.

[5] Silence was essential to perfect auspices; Fest. 348. 29; ep. 64; Livy viii. 23. 15; ix. 38. 14; x. 40. 2; Pliny, *N. H.* viii. 57. 223. [6] Serv. *in Aen.* iii. 89; Livy i. 18. 9.

[7] Cf. Livy xli. 18. 14. [8] Cf. Livy ix. 38. 15; 39. 1. [9] Cf. p. 115, 118, n. 2.

[10] Livy v. 52. 15; ix. 38. 15 f.; 39. 1; Dion. Hal. ix. 41. 3; Cic. *Att.* ii. 7. 2; 12. 1; viii. 3. 3. Hoffmann, *Patric. u. pleb. Curien*, 29 ff., is of the opinion that the assembly which passed the lex curiata was not auspicated, his idea being that the lex curiata itself conferred the ius auspiciorum publicorum. There is no ground, however, for either of these suppositions.

[11] Cic. *N. D.* ii. 4. 11; Dion. Hal. vii. 59. 2. On the censorial auspication of the comitia centuriata for the lustrum, see Varro, *L. L.* vi. 86. Mommsen, *Röm. Staatsr.* i. 98, n. 6, supposes this to be the auspication of the censor's entrance into office (cf. 81, n. 1), believing that assemblies which did not vote were unauspicated. But cf. p. 111, n. 1 below.

[12] Dio Cass. liv. 24. 1; Cic. *Fam.* vii. 30. 1; cf. Varro, *R. R.* iii. 2. 1.

[13] Dion. Hal. ix. 41. 3; 49. 5.

[14] This is shown by the *Commentarium Anquisitionis* of M. Sergius, a quaestor, in Varro, *L. L.* vi. 91.

known, too, that the censors auspicated the lustral gathering of the centuries,[1] hence we may infer that magistrates and sacerdotes were accustomed to take auspices for formal religious assemblies.[2] With these exceptions contiones were doubtless held without auspices by patrician as well as by plebeian magistrates.

III. *Auspicia Publica Oblativa*

If Jupiter had approved the holding of an assembly, the magistrate was not for that reason necessarily done with auspices. Though the impetrativa may have favored, prohibitive oblativa were still possible, for circumstances might cause the god to change his mind so as to forbid what he had previously sanctioned; and the warning omen might come at any time before the act was completed. Sometimes the magistrate himself discovered, or for the accomplishment of his purpose pretended to discover, the evil omen. When for instance Pompey was holding an assembly for the election of praetors, and Cato, a political opponent, offered himself as a candidate, Pompey, seeing the assembly unanimous for this man, declared that he heard a clap of thunder, and thus by an adjournment succeeded in preventing the election.[3] Sometimes the magistrate was informed of the omen by (1) a private person, (2) an augur, or (3) another magistrate. In the first two cases the report was termed nuntiatio, in the third obnuntiatio.[4] Information received from a

[1] *Censoriae Tabulae*, in Varro, *L. L.* vi. 86 f.: "Ubi noctu in templum censor auspicaverit atque de caelo nuntium erit . . . tum conventionem habet qui lustrum conditurus est." Mommsen's interpretation (*Röm. Staatsr.* i. 81, n. 2, 98, n. 6) which applies these auspices to the censor's entrance upon his office seems forced. It is not necessary, however, to suppose that this magistrate had to renew the auspices for every day of the census-taking; Mommsen, ibid. i. 113, n. 4.

[2] The current view (cf. Lange, *Röm. Alt.* ii. 718; Mommsen, *Röm. Staatsr.* i. 98; Karlowa, *Röm. Rechtsgesch.* i. 380; Liebenam, in Pauly-Wissowa, *Real-Encycl.* iv. 1150) that no contio was auspicated appears therefore to require modification.

[3] Plut. *Pomp.* 52; *Cato Min.* 42.

[4] Ael. Don. in Terent. *Ad.* iv. 2. 8: "Qui malam rem nuntiat, obnuntiat, qui bonam, adnuntiat: nam proprie obnuntiare dicuntur augures, qui aliquid mali ominis scaevumque viderint." In this late author (350 A.D.) obnuntiatio is ascribed to the augurs. When Cicero says to Antony (*Phil.* ii. 33. 83) "Augur auguri, consul consuli obnuntiasti," he does it only to find fault with the proceeding; cf. Momm-

private citizen the president could credit or not as he saw fit, or he could declare it irrelevant;[1] but the law compelled him to accept the nuntiatio of an augur or the obnuntiatio of another magistrate.

Prohibitive auspicia oblativa included evil omens of all kinds. When in 310 the dictator called the curiae for passing the lex de imperio, it chanced that the Curia Faucia was the first to vote (principium). Now this curia was ill omened because on two earlier occasions it had happened to be principium at a time of great national disaster. The dictator accordingly adjourned the meeting till the following day, when he again summoned it after renewing the auspicia impetrativa.[2] A case of epilepsy, by vitiating the business of the assembly, required an adjournment; and for that reason the malady was called the comitial sickness.[3] In the later republic the chief oblativa had come to be caelestia; and it could happen that the auspicia impetrativa of any magistrate might as oblativa vitiate the comitia of another. For this reason when a higher magistrate was about to hold an assembly, he forbade the taking of auspices by all inferior to him, for fear they might annul his proceedings.[4]

Although the augurs had neither the auspicia impetrativa nor the right to watch the sky for unfavorable omens,[5] they were competent to report (nuntiatio) unexpected oblativa to the magistrates.[6] Their object in attending the comitia accordingly was

sen, *Röm. Staatsr.* i. 111, n. 2. These are the only instances known to us in which the distinction is not observed; Mommsen, ibid.; Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2335; Valeton, in *Mnemos.* xix (1891). 75 ff., 229 ff.; Bouché-Leclerq, in Daremberg et Saglio, *Dict.* i. 582.

[1] Cato, *De sacr. comm.* in Fest. 234. 33: "Quod ego non sensi, nullum mihi vitium facit;" Pliny, *N. H.* xxviii. 2. 17; Serv. *in Aen.* xii. 259: "In oblativis auguriis in potestate videntis est, utrum id ad se pertinere velit, an refutet et abominetur;" cf. Cic. *Div.* ii. 36. 77; Wissowa, ibid. ii. 2335. An example of an evil omen privately reported is given by App. *B. C.* i. 30.

[2] Livy ix. 38. 16 with ch. 39. 1.

[3] Fest. 234. 27.

[4] P. 104; Cato, *De re mil.* in Fest. 214-7: "Magistratus nihil audent imperare, ne quid consul auspici peremat."

[5] P. 114.

[6] Cic. *Phil.* ii. 32. 81: "Nos (augures) nuntiationem solum habemus, consules et reliqui magistratus etiam spectionem;" Varro, *Rer. hum.* xx, in Non. Marc. 92: "De caelo auspicari ius neminist praeter magistratum;" Fest. 333. 9 (quoted p. 106, n. 8). Madvig, *Röm. Staat.* i. 267, supposes that the augurs had both the spectio and the nuntiatio; but this view contradicts the clear statement of Cicero; Mommsen,

not only to assist the president with their special knowledge,[1] but also to witness the religious legality of the proceeding. In the latter function the augur derived great influence[2] from the possibility of an investigation into such legality by the augural college and the senate, which might result in the annulment of the act.[3] For this reason witnessing augurs were granted the privilege of adjourning the assembly in case they perceived unfavorable omens.[4] Cicero[5] describes in detail such an adjournment of an electoral assembly of centuries: "Behold the day for the election of Dolabella! The prerogative century is drawn by lot, he (the augur) remains quiet. The vote is announced, he is silent. The first class is called and the announcement made. Then as usual the suffragia (of the equites?) were summoned; then the second class is called. All this happened more quickly than I have told it.

"When the business is over, that excellent augur says, 'We adjourn to another day.' O remarkable impudence! What (omen) had you seen? What had you felt? What had you heard?" Antony, who was both consul and augur, presiding over the electoral assembly, allowed the voting to continue till a majority was nearly reached in favor of Dolabella, when, making use of the augural formula, he adjourned the meeting. This procedure was in itself legal; but Antony had from the beginning of the year boasted of his intention to prevent through augury this man's election. As only magistrates, through their right to the spectio, to be explained hereafter, could with certainty predict an evil omen,[6] it was evident that Antony, acting merely as augur, made a fictitious report.

Augurs were always present at meetings of the curiae,[7] of

Röm. Staatsr. i. 109, n. 1. The fact is, as has been stated (p. 106), they had the spectio for their own functions only, and as assistants of the magistrates simply the nuntiatio.

[1] The formula used is "in auspicio esse;" Cic. *Att.* ii. 12. 1.

[2] Cic. *Leg.* ii. 8. 20 f.; iii. 4. 11; 19. 43; *N. D.* ii. 3. 8; *Div.* ii. 33. 71; cf. Lange, *Röm. Alt.* i. 339.

[3] P. 106 f.

[4] Cic. *Phil.* ii. 33. 83; *Div.* i. 40. 89: "Privati eodem sacerdotio praediti rem publicam religionum auctoritate rexerunt," an exaggeration; *Leg.* ii. 12. 31; Livy i. 36. 6. In this capacity the augur did not look for omens with a view to reporting them, but merely announced those which came unexpectedly.

[5] *Phil.* ii. 33. 82 f.

[6] P. 115.

[7] Three were present at curiate assemblies; Cic. *Att.* iv. 17. 2; cf. ii. 7. 2.

the centuries,[1] and of the tribes under the presidency of a patrician magistrate.[2] That they attended the meetings of the plebs as well and had the same relation to the plebeian as to the other assemblies is necessarily implied in Cicero's [3] question, "What shows greater religious power than to be able to grant or refuse to grant the right to transact business with the people or with the plebs?"

If the person who reported the evil omen was not an augur but a magistrate, the president was equally bound to heed it and to dismiss the assembly;[4] and the force of the obnuntiatio was not in any way affected by the relative official rank of the two persons concerned. When accordingly a higher magistrate had set a day for an assembly, he forbade all inferior magistrates not only to take the auspicia impetrativa,[5] but also to watch the sky — de caelo servare — for any purpose on that day, for fear that some omen unfavorable to the comitia might be seen.[6] A consul for instance could prevent a quaestor from scanning the heavens on any particular day; and the senate on the rare occasions when it felt itself sufficiently strong, suspended for a particular act of the assembly the right of all magistrates to receive and to announce unfavorable omens.[7] In the absence of senatorial interference it remained possible for any higher magistrate to scan the heavens — de caelo servare — on an assembly day appointed by another, and to vitiate the comitia by reporting an unfavorable omen. We find accordingly a consul obnuntiating against a colleague[8] and against the pontifex maximus,[9]

[1] In this case the augur not only assisted with his special knowledge, but also acted as crier; Varro, *L. L.* vi. 95. [2] Varro, *R. R.* iii. 2. 2; 7. 1.

[3] *Leg.* ii. 12. 31. [4] Cic. *Phil.* ii. 32. 81. [5] P. 104, 112.

[6] Gell. xiii. 15. 1; cf. Rubino, *Röm. Verf.* 79.

[7] Cic. *Att.* i. 16. 13: "Lurco tribunus pl. solutus est et Aelia et Fufia, ut legem de ambitu ferret;" *Sest.* 61. 129: "Decretum in curia . . . ne quis de caelo servaret, ne quis moram ullam adferret" (that no one should watch the heavens or interpose any delay in the proceedings for the recall of Cicero). Both measures here referred to were so popular and the magistrates were so nearly unanimous in their support that the senate felt it could in these cases forestall the opposition of one or two opponents.

[8] In the famous case of Bibulus against Caesar, 59; Suet. *Caes.* 20; cf. Dio Cass. xxxviii. 4. 2 f.

[9] Proved by the fact that the watching of the sky by Bibulus should have annulled the arrogation of Clodius (Cic. *Dom.* 15. 39 f.; *Har. Resp.* 23. 48; *Att.* ii. 12. 2; 16.

a praetor against a tribune of the plebs,[1] and a tribune against a consul[2] or a censor,[3] as well as against a colleague.[4]

So certain was it that a magistrate who looked for a bad omen would see one that the expression "to watch the sky" became equivalent to discovering an unpropitious sign. The rule was therefore formulated that "religion forbade the transaction of any business with the people when it was known that the sky was watched."[5] If accordingly a magistrate announced that he intended to scan the heavens on the day appointed for an assembly, this declaration was in itself sufficient in the ordinary course of events to compel a postponement. In the year 57 Milo, a tribune of the plebs, pushed the custom to extremes by declaring his intention to observe the sky on all comitial days.[6] Strictly the observation had to be made and reported before the assembly met. "Can any one divine beforehand," Cicero[7] asks, "what defect there will be in the auspices, except the man who has already determined to watch the heavens? This in the first place the law forbids to be done in the time of an assembly; and if any one has been observing the sky, he is bound to give notice of it, not after the comitia are assembled, but before they meet." In the case belonging to the year 57 referred to above, Milo, the tribune, came into the Campus Martius before midnight in order to anticipate the arrival of the consul Metellus, who wished to hold the elections. The assembly ordinarily met at sunrise, and

2; *Prov. Cons.* 19. 45; Mommsen, *Röm. Staatsr.* i. 113, n. 2), which was brought about by an act of the curiae under the presidency of the supreme pontiff. Any one competent to observe the heavens necessarily had the obnuntiatio.

[1] Cic. *Sest.* 36. 78. Probably obnuntiatio against tribunes is referred to by Cic. *Phil.* v. 3. 7 f. and by Ascon. 68 (the last is the abolition of the Livian laws of 91), but the obnuntiating magistrate is not known. In Cic. *Vatin.* 7. 17 ("Num quem post urbem conditam scias tribunum pl. egisse cum plebe, cum constaret servatum esse de caelo") the principle is laid down that any one who has the right to obnuntiate may use this power against a tribune. The validity of the tribunician law for the interdiction of Cicero from fire and water was maintained on the ground that no one was then watching the sky; Cic. *Prov. Cons.* 19. 45.

[2] Cic. *Sest.* 37. 79; cf. 38. 83; *Phil.* ii. 38. 99; *Att.* iv. 3. 3 f.; 17. 4; *Q. Fr.* iii. 3. 2 (cf. Drumann-Gröbe, *Gesch. Roms*, iii. 6; Mommsen, *Röm. Staatsr.* i. 113, n. 3); Dio Cass. xxxix. 39; Plut. *Crass.* 16; App. *B. C.* ii. 18. 66 (cf. Cic. *Div.* i. 16. 29); iii. 7. 25. [3] Cic. *Att.* iv. 9. 1. [4] Cic. *Vatin.* 7. 16.

[5] Cic. *Dom.* 15. 39: "(Augures) negant fas esse agi cum populo, cum de caelo servatum sit." [6] Cic. *Att.* iv. 3. 3. [7] Cic. *Phil.* ii. 32. 81.

could not convene after midday. Milo accordingly remained on that day till noon, without seeing the consul. Then Metellus demanded that for the future the obnuntiatio should be served on him in the Forum; it was unnecessary, he said, to go to the Campus before daybreak; he promised to be in the comitium at the first hour of the day. As Milo was coming into the Forum before sunrise on the next comitial day, he discovered Metellus stealing hurriedly to the Campus by an unusual route. The tribune came upon him and served the notice.[1]

The consul's announcement of intention to watch the sky might be strengthened by a proclamation declaring certain or all comitial days for the remainder of the year to be holidays, on which the people could not legally transact business in assembly.[2]

Although the obnuntiatio doubtless originated in the early republic, it played no considerable part in political strife till after the Gracchi. A great impetus to the abuse of the power was given by the Aelian and Fufian laws, which were probably two plebiscites[3] passed about 150.[4] What features of these statutes were new has not been precisely determined. It is certain, however, that they made possible the condition in which we find the spectio and obnuntiatio before the legislation of Clodius on the subject in 58. As the tribune did not originally have the obnuntiatio, we may infer that in all probability these laws granted him the right to exercise it against patrician mag-

[1] Cic. *Att.* iv. 3. 4. In like manner Bibulus, after obnuntiating in vain against Caesar's agrarian law (p. 439), determined to remain at home and continually to watch the sky for the remainder of the year. This procedure invalidated all acts passed during that time by the assembly; Cic. *Dom.* 15. 39 f.; *Har. Resp.* 23. 48; *Prov. Cons.* 19. 45.

[2] This procedure too was followed by Bibulus; Dio Cass. xxxviii. 6. 1; cf. Mommsen, *Röm. Staatsr.* i. 82, n. 3.

[3] That they were two separate enactments, and not one complex statute by joint authors, is clearly indicated by Cic. *Har. Resp.* 27. 58: "Sustulit duas leges Aeliam et Fufiam;" *Sest.* 15. 33. Generally they are spoken of as separate laws, though Cicero occasionally, as *Vatin.* 5. 7, groups them in one. That they were plebiscites is held probable by Mommsen, *Röm. Staatsr.* i. 111, n. 4.

[4] When Cicero, *Vatin.* 9. 23, states that these laws survived the ferocity of the Gracchi, the audacity of Saturninus, etc., he places their origin in the times before the Gracchi; and when he speaks of their abolition, 58, he tells us that they had been in force about a hundred years (*Pis.* 5. 10).

istrates in the way described above. Similarly from the fact that the plebeian tribal assembly was not originally subject to religious obstruction on the part of the government, it is reasonable to conclude that the Aelian and Fufian statutes gave the patrician magistrates the obnuntiatio against that body.[1] It was equivalent to a power of veto, which the aristocracy could now exercise upon tribunician legislation, hence Cicero[2] regards the two statutes as most holy[3] means of "weakening and repressing the fury of the tribunes," and as the "surest protection of the commonwealth."[4] Notwithstanding the opinion of Lange,[5] that the obnuntiatio was restricted to legislation, it seems clear from the words of Cicero,[6] as well as from the lack of reference in the sources to such a limitation, that it applied equally to elections. So long, however, as the nobility could depend for support upon the tribunes, it had little need of such a power. But in the last years of the republic, after the tribunician veto had been undermined by Ti. Gracchus and Appuleius Saturninus, and the tribunes were again acting independently of the senate as in the early history of their office, optimates and populares, taking full advantage of the Aelian and Fufian laws, alike exploited the auspices recklessly for partisan objects. Their behavior was a sign of both religious and political disintegration. Vatinius, tribune of the plebs in 59, had the boldness utterly to disregard these statutes;[7] and in 58 the tribune Clodius repealed them in so far as they affected legislation,[8] whereas for elections the obnuntiatio still remained in force.[9] The misuse of auspices for political purposes dates back, according to Livy,[10] to the beginning of the Samnite wars.

[1] Dio Cass. xxxviii. 13. [2] *Vatin.* 7. 18. [3] Ibid. 9. 13.

[4] *Red. in Sen.* 5. 11; cf. *Har. Resp.* 27. 58; *Pis.* 4. 9: "Propugnacula murique tranquillitatis atque otii." With other provisions of these statutes (cf. Cic. *Att.* i. 16. 13; Schol. Bob. 319 f.) the present discussion is not concerned. See further on these laws, p. 358 f. below.

[5] *Kleine Schriften*, i. 274 ff., 341; *Röm. Alt.* ii. 315, 477 f.

[6] *Att.* iv. 3. 4; 16. 5; *Phil.* ii. 32. 81. [7] Cic. *Vatin.* 6. 15; 7. 18.

[8] Cic. *Red. in Sen.* 5. 11: "Legem tribunus pl. tulit, ne auspiciis obtemperaretur, ne obnuntiare concilio aut comitiis, ne intercedere liceret, ut lex Aelia et Fufia ne valeret;" *Har. Resp.* 27. 58; *Sest.* 15. 33; *Prov. Cons.* 19. 46; *Pis.* 4. 9; 5. 11; Dio Cass. xxxviii. 13. 5 f.; 14. 2; Ascon. 9; Schol. Bob. 319 f.

[9] Cic. *Att.* iv. 3. 4; 16. 5; *Phil.* ii. 32. 81; cf. Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 84; Drumann-Gröbe, *Gesch. Roms*, ii. 204 f. [10] VIII. 23. 13 ff.

Although this may be an anticipation of later conditions, there can be no doubt as to the attitude of statesmen toward the custom in the closing years of the Punic wars.[1] In the time of Clodius and Cicero, while some maintained a sincere belief in these ceremonies, doubtless the great majority of public men saw in their use nothing more than political chicanery calculated, by deceiving the multitude, to keep the real power in the hands of a few.[2]

Rubino, J., *Untersuchungen über röm. Verfassung und Geschichte*, 34–106; Nissen, H., *Das Templum;* Mommsen, *Röm. Staatsrecht*, i. 76–116; Marquardt, J., *Röm. Staatsverwaltung*, iii. 397–415; Lange, L., *Röm. Altertümer*, 3 vols. index s. Augures, Auspicia, Inauguratio, etc.; *De legibus Aelia et Fufia commentatio*, in *Kleine Schriften*, i. 274–341; Herzog, E., *Geschichte und System der röm. Staatsverfassung*, 621–30, see also index s. Augures, Auspicien; Müller-Deecke, *Etrusker*, ii. 114–27; Gilbert, O., *Geschichte und Topographie der Stadt Rom im Altertum*, 3 vols., index s. Auguraculum, Augures; Wissowa, G., *Religion und Kultus der Römer*, 450–60; *Augures*, in Pauly-Wissowa, *Real-Encycl.* ii. 2313–44; *Auspicium*, ibid. ii. 2580–7; Aust, E., *Religion der Römer*, index s. Auguraculum, Augurn, Auspicia, etc.; *Iuppiter Elicius*, in Roscher, *Ausführliches Lexikon der griech. und röm. Mythologie*, ii. 656–61; Bouché-Leclerq, A., *Histoire de la Divination dans Antiquité*, iv. 134–285 (sources and modern literature, p. 180 f.); *Augures*, in Daremberg et Saglio, *Dict.* i. 550–60; *Auspicia*, ibid. i. 580–5; Spinazzola, V., *Augures*, in Ruggiero, *Dizionario epigrafico*, i. 778–810; Ruggiero, ibid. i. 950 f.; De Marchi, A., *Il Culto privato di Roma antica*, i. 152 ff., 232 ff.; Valeton, I. M. J., *De modis auspicandi Romanorum*, in *Mnemosyne*, N. S. xvii (1889). 275–325, 418–52; xviii. 208–64, 406–56; *De iure obnuntiandi comitiis et conciliis*, ibid. xix (1891). 75–113, 229–70; *De templis Romanis*, ibid. xx (1892). 338–90; xxi. 62–91, 397–440; xxiii. 15–79; xxv. 93–144, 361–85; xxvi. 1–93 (papers in the last two vols. are on the pomerium); Luterbacher, F., *Der Prodigienglaube und Prodigienstil der Römer*, 2 ed.; Wülker, L., *Die geschichtliche Entwickelung des Prodigienswesens bei den Römern;* Willoughby, W. W., *Political Theories of the Ancient World*, ch. xv.

[1] Polyb. vi. 56. 6 ff.

[2] The former view was taken by Appius Claudius Pulcher, consul in 54 and author of a work *De disciplina augurali* (Fest. 298. 26), and the latter by C. Claudius Marcellus, consul in 50, and by Cicero — all three being public augurs; Cic. *Div.* i. 47. 105; ii. 18. 42; 33. 70; 35. 75; *Leg.* ii. 13. 32 f.; *N. D.* i. 42. 118; in general *Div.* ii. At that time auspices were a mere pretence; the chicken omens were forced, and the celestial signs were not seen; Cic. *Div.* ii. 33 f., 71 f.; Dion. Hal. ii. 6. On the decline of augury and the auspices, see Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2315, 2333.

PART II

THE ASSEMBLIES

ORGANIZATION, PROCEDURE, AND FUNCTIONS, RESOLUTIONS, STATUTES, AND CASES

CHAPTER VI

COMITIA AND CONCILIUM

In treating of the distinction between comitia and concilium scholars have invariably begun with the juristic definition of Laelius Felix,[1] quoted by Gellius,[2] "He who orders not the whole people but some part of it to be present (in assembly) ought to proclaim not comitia but a concilium;" they have limited themselves to illustrating this definition, and to setting down as lax or inaccurate the many uses of the two words which cannot be forced into line with it. The object of this discussion, on the contrary, is to consider all the occurrences of these words in the principal extant literature, especially prose, of the republic and of the Augustan age — a period in which the assemblies were still in existence — for the purpose of testing the definition of Laelius, and of establishing new definitions by induction in case his should prove wrong.

It is convenient to begin with Livy, who though an imperial writer, and under the stylistic influence of his age, probably adhered in the main to the technical terminology of the republican annalists from whom he drew. The first point which will be established is that in Livy's usage the difference between

[1] Probably the jurist of that name who lived under Hadrian, and who is mentioned by Paulus, in *Dig.* v. 4. 3.

[2] XV. 27. 4: "Is qui non universum populum, sed partem aliquam adesse iubet, non comitia, sed concilium edicere debet."

comitia and concilium is not a difference between the whole people and a part of the people.[1]

The plebeian tribal assembly is termed comitia in Livy ii. 56. 1, 2; ii. 58. 1; ii. 60. 4; iii. 13. 9 ("Verginio comitia habente conlegae appellati dimisere concilium," in which comitia and concilium in one sentence are applied to the same assembly); iii. 17. 4 (the comitia for passing the Terentilian law, which from Livy's point of view was the plebeian assembly);[2] iii. 24. 9; iii. 30. 6; iii. 51. 8 (comitia of plebeian soldiers for electing military tribunes and tribunes of the plebs); iii. 54. 9, 11: (plebeian comitia under the pontifex maximus); iv. 44. 1; v. 10. 10; vi. 35. 10 ("Comitia praeter aedilium tribunorumque plebi nulla sunt habita"); vi. 36. 9 (the comitia for voting on the Licinian-Sextian laws); vi. 39. 5; xxv. 4. 6; xxxiv. 2. 11; xlv. 35. 7. Other examples of comitia of a part of the people are Livy ii. 64. 1 (as the plebeians refused to participate in the consular election, the patricians and clients held the comitia); xxvi. 2. 2 (comitia held by the soldiers, and hence by only a part of the people, for the election of a propraetor). Still more to the point are the comitia sacerdotum: for electing a chief pontiff, Livy xxv. 5. 2; for electing an augur, xxxix. 45. 8; for electing a chief curio, xxvii. 8. 1. Comitia sacerdotum were composed of seventeen tribes, and hence of only a part of the people.[3] Lastly is to be noted the fact that the plebeian assembly met on a comitialis dies; Livy iii. 11. 3.

It is now sufficiently established that Livy often applies the term comitia to the assembly of plebs and to other assemblies which included but a part of the people. It is equally true that he uses concilium to denote an assembly of the whole people. The principal instances of Roman assemblies are:

(1) Livy i. 8. 1: "Vocataque ad concilium multitudine, quae coalescere in populi unius corpus nulla re praeterquam legibus poterat, iura dedit."
(2) i. 26. 5: "Concilio populi advocato" (for the trial of Horatius).

[1] For the purpose of the present discussion the plebeian assembly — that is, the assembly which convened under the tribunes of the plebs and which issued plebi scita — is assumed to be a gathering of only a part of the people. If it admitted patricians (p. 300), and if therefore there was no assembly comprised exclusively of plebeians, no argument would be needed to prove the error of the conventional distinction between comitia and concilium.

[2] In Livy iii. 16. 6, this meeting is called a concilium.

[3] P. 341.

(3) i. 36. 6: "Auguriis certe sacerdotioque augurum tantus honos accessit, ut nihil belli domique postea nisi auspicato gereretur, concilia populi, exercitus vocati, summa rerum, ubi aves non admississent, dirimerentur."

(4) ii. 7. 7: "Vocato ad concilium populo" (representing the consul as calling the people to an assembly).

(5) iii. 71. 3: "Concilio populi a magistratibus dato" (for settling the dispute between Ardea and Aricia).

(6) vi. 20. 11: "Concilium populi indictum est" (an assembly of the people which condemned Marcus Manlius).

These instances are well known, and have often been discussed. It is enough for our purpose to note here that they prove Livy's willingness to designate assemblies of the whole Roman people as concilia. But Mommsen[1] was not satisfied with regarding all these cases as inaccurate. In spite of Laelius he believed that concilium could sometimes properly apply to assemblies of all the people. With reference to the first example given above he says that where concilium denotes an assembly of all the people, the contio is meant — in other words, a concilium of all the people is an assembly which has not been summoned with a view to voting, and is not organized in voting divisions. This new definition might explain example (1), for possibly Livy did not think of the first Roman assembly as voting on the laws which Romulus gave, or even as organized. Unfortunately Mommsen tries to support his definition by example (2), which refers to the assembly for the trial of Horatius. But in ch. 26. 12 the same assembly, which must have been the gathering of the curiae, and which Cicero[2] speaks of as comitia, voted the acquittal of the accused. Hence it could not have been a mere contio. Another passage cited in support of his view, Livy ii. 7. 7, example (4), represents the consul as calling the people to a concilium. First he addressed them ("in contionem escendit"), and afterward laws were passed on the subject of which he treated in his speech — evidently by the same assembly; hence the concilium populi here mentioned was something more than a contio. Another illustration which Mommsen offers, but which, having to do with a Roman assembly only by implication, is not included in the list of examples given

[1] *Röm. Forsch.* i. 170, n. 8; *Röm. Staatsr.* iii. 149, n. 3.

[2] *Mil.* 3. 7; cf. p. 122, n. 3 below.

above, is Livy v. 43. 8: "When he had pushed into the midst of the contio, though hitherto accustomed to keep away from such concilia."[1] The passage refers to a meeting of the Ardeates for consulting in regard to the sudden approach of the Gauls. Gatherings of the kind were called concilia, but the word contio is also introduced into the passage with reference to a speech made in the assembly. The implication is that such concilia of all the people for deliberation were held also at Rome. The circumstances indicate that it met with a view also to taking action, and that it was therefore not a simple contio. This passage accordingly offers no support to Mommsen's view that when applied to the whole people concilium is merely a listening, not an acting, assembly.[2] Summing up the evidence for the new definition of concilium, we may say that, were it true, it might apply to Livy i. 8. 1, though it is unessential to the explanation either of this passage or of any other. A single case, too, even if it were clear, is not a sufficient basis for a generalization; and though we must agree with Mommsen that the juristic definition does not cover the cases cited above, it is necessary to reject his amendment as unsatisfactory.[3]

In fact Mommsen soon discovers cases which, from his own admission, neither his definition nor that of Laelius will explain, for instance, Livy i. 36. 6, example (3). On this citation Mommsen[4] remarks that concilia in this connection could not mean contiones, with which in his opinion the auspices had nothing to do; it could not refer to the plebeian assemblies, which he also

[1] "Cum se in mediam contionem intulissent, abstinere suetus ante talibus conciliis."

[2] His last citation on this point, Livy v. 47. 7 ("Vocatis ad concilium militibus") has reference to the soldiers only — to a part of the people — and is therefore altogether unlike the others. For an explanation of it, see p. 135 f.

[3] A closely related question is whether concilium is ever restricted to the deliberative stage of a session preliminary to the division into voting units, with comitia limited in a corresponding manner to the final, voting stage of the session. A few passages, as examples (2) and (4), might be explained by such a conjecture, but others, as Livy iii. 13. 9 ("Virginio comitia habente conlegae appellati dimisere concilium") prove the supposition impossible. Concilium denotes the assembly in its final as well as in its initial stage, voting as well as deliberating, whereas in ordinary political language contio is used to denote the merely listening or witnessing assembly, whether organized or unorganized, whether called to prepare the citizens for voting or for any other purpose.

[4] *Röm. Forsch.* i. 170, n. 8.

assumes to have been free from the auspices.[1] He concludes, therefore, that it denotes the "patricio-plebeian" tribal assemblies.[2] But why Livy should here be thinking merely of the tribal assemblies, especially in connection with a time before they had come into existence, no one could possibly explain. It is far more reasonable to assume that he intended to include all kinds of assemblies, curiate, centuriate, and tribal, which required the auspices. The next citation which Mommsen finds difficult is Livy iii. 71. 3, example (5) — an assembly of the tribes meeting under the consuls to decide the dispute between Ardea and Aricia over a piece of territory. The assembly voted (ch. 72. 6) that the land in question belonged to the Roman people. Mommsen's [3] explanation of concilium in this connection is that the resolution adopted by this assembly affected foreign states only, and was not binding on Rome; hence he assumes that comitia are an assembly whose resolutions are binding on the Roman state. Here then we have a third definition of concilium based like the second on a single case. But Mommsen thinks he finds some evidence for his last definition in the fact that assemblies of foreign states are usually termed concilia; and he assumes the reason to be that their resolutions were not binding on Rome. It would be strange, however, if in calling foreign institutions by Latin names (rex, senatus, populus, plebs, praetor, dictator, etc.) Roman writers attempted to show a connection between these institutions and Rome, seeing that in most cases no such connection could exist. The proposed explanation of this use of concilium becomes actually absurd when it is extended to foreign comitia; Mommsen certainly would not say that the resolutions of the Syracusan comitia, mentioned by Livy, were binding on Rome.

His last and most difficult case is Livy vi. 20. 11 — the concilium populi which condemned Marcus Manlius, example (6), p. 121. Evidently this was the centuriate assembly, which alone

[1] Ibid. i. 195 f. It is true that the plebeian assembly came to be subject to the obnuntiatio (p. 117), but it would be absurd on this ground to suppose that Livy's statement refers especially to gatherings of the kind.

[2] This statement admits that concilium here designates an assembly of the whole people; but Mommsen does not tell us why the word applies with greater propriety to the "patricio-plebeian" tribal assembly than to the centuriate assembly. For the true reason, see p. 137, n. 5.

[3] *Röm. Staatsr.* iii. 149, n. 3.

had the right to try capital cases, and which alone had to meet outside the pomerium. Various feeble explanations have been proposed; but Mommsen, with others, prefers to consider the word wrongly used. It is true that if we accept the juristic definition, we must conclude that Livy is guilty of error not only in this case but wherever he applies the term concilium to an assembly of all the people, Roman or foreign; but as we shall proceed by induction, we must, at least provisionally, consider all the cases correct, and frame our definitions accordingly.

We have now reviewed a number of passages in Livy in which concilium includes all the Romans. There remains a large group of passages which refer to foreign assemblies. In considering these cases we are to bear in mind that the Romans apply to foreign institutions in general the Latin terms with which they are familiar, and in the same sense in which these terms are used of Roman institutions; in this way only could they make themselves understood.

Concilium populi and concilia populorum are frequent (e.g. Livy vii. 25. 5; x. 10. 11; 14. 3; xxi. 14. 1; xxiv. 37. 11), and most of the assemblies of foreign states designated as concilia are known to have admitted both nobles and commons.

Instances of concilia in foreign states are: Alba Longa, Livy i. 6. 1; Latins, Livy i. 50–52; vi. 10. 7; vii. 25. 5; viii. 3. 10; xxvii. 9. 2; Aequians, Livy iii. 2. 3; ix. 45. 8; Antium, Roman colony at, Livy iii. 10. 8; Veii, Livy v. 1. 8; Etruria, Livy v. 17. 6; x. 10. 11; 13. 3; 14. 3; Gauls, Livy v. 36. 1; xxi. 20. 1; Hernicans, Livy vi. 10. 7; Samnites, Livy x. 12. 2; Saguntines, Livy xxi. 14. 1; Iberians, Livy xxi. 19. 9, 11; xxix. 3. 1, 4; Enna, Livy xxiv. 37. 11; Aetolians, Livy xxvi. 24. 1; xxvii. 29. 10; xxxi. 29. 1, 2, 8; 32. 3, 4; xxxiii. 3. 7; 12. 6; xxxiv. 41. 5; xxxv. 32. 3, 5; 33. 1, 4; 34. 2; 43. 7; xxxvi. 26. 1; 28. 7, 9; xxxviii. 9. 11; 10. 2; xlii. 6; Achaeans, Livy xxvii. 30. 6; xxxi. 25. 2; xxxii. 19. 4, 5, 9; 20. 1; 21. 2; 22. 3, 9, 12; xxxv. 25. 4; 27. 11; 48. 1; xxxvi. 31. 9, 10; 32. 9; 34. 1; 35. 7; xxxviii. 31. 1; 32. 3; 34. 5; 35. 1; xxxix. 33, 35, 36, 37, 48, 50; xli. 24; xlii. 12; xliii. 17; Epirus, Livy xxxii. 10. 2; xlii. 38. 1: Boeotians, Livy xxxiii. 1. 7; 2. 1, 7; xxxvi. 6. 3; xlii. 43, 44, 47; Acarnanians, Livy xxxiii. 16. 3, 5, 8; xliii. 17; Thessalians, Livy xxxiv. 51. 5; xxxv. 31. 3; xxxvi. 8. 2; xlii. 38; Argos, Livy xlii. 44; Macedonians, Livy xlv. 18.

Though most of these concilia are known to have been assemblies of the whole people, nobles and commons, very rarely, as in Livy x. 16. 3, the word signifies a council of a few men — in this case, of the leading men of Etruria (cf. xxxvi. 6.

6); and twice, at Capua, we hear of a plebis concilium; Livy xxiii. 4. 4; xxvi. 16. 9. From the frequency of the first-mentioned use we must conclude that Livy does not hesitate to designate as concilia assemblies of the whole people.

Comitia, on the other hand, more rarely applies to foreign assemblies. We hear of comitia of the Veientans (Livy v. 1. 1), of the Syracusans (Livy xxiv. 23. 1; 26. 16; 27. 1), of the Argives (Livy xxxii. 25. 2), of the Boeotians (Livy xxxiii. 27. 8), and of the Thessalians (Livy xxxiv. 51. 5).

The conclusions thus far reached are as follows:

I. As to Comitia:

1. Livy frequently uses comitia to denote the tribal assembly of the plebs.
2. He always uses comitia to denote the assembly for the election of priests, consisting of but seventeen tribes, and hence of a minority of the people.

II. As to Concilium:

1. He frequently uses concilia (rarely comitia) to denote foreign assemblies of all the people.
2. Less frequently he uses concilia to denote Roman assemblies of all the people.

Mommsen and others admit, however, that Livy's usage does not conform strictly to the definition of Laelius Felix; they assume accordingly that the exact meaning of comitia was lost in imperial times, that for the correct usage we should look to the republican writers.

As Caesar has little occasion for employing the terms in relation to the Roman assemblies, his usage on purely Roman grounds cannot be made out. Foreign assemblies — that is, of Gauls — he generally designates as concilia: *B. G.* i. 30, 31; iii. 18; v. 2, 6, 24, 56 f.; vi. 3, 20; vii. 63, 89; viii. 20 (Hirtius). In all these cases the concilium is a tribal or national assembly including both nobles and commons; more rarely the word signifies a council of chiefs; *B. G.* i. 33; vii. 75; and perhaps vii. 1. Once he applies comitia to Gallic assemblies; *B. G.* vii. 67. So far, therefore, as his usage can be determined, it does not differ from Livy's. From Macrobius, *Sat.* i. 16. 29 ("Contra Julius Caesar XVI auspiciorum negat, nundinis contionem advocari posse: id est cum populo agere: ideoque nundinis Romanorum haberi comitia non posse"), it appears that in

Lucius Julius Caesar's[1] augural language, which must certainly have been conservative, contio was a general word including comitia. This passage, with the similar one in Cicero, *Att.* iv. 3. 4, suggests that the distinctions between contio, comitia, and concilium, far from breaking down in late republican times, were only then taking form.

The material furnished by Sallust is more conclusive. In *Hist.* ii. 22, concilium Gallorum doubtless signifies a national assembly; and although generally comitia refers to the centuriate gathering (*Cat.* 24, 26; *Iug.* 36, 44), in *Iug.* 37 ("P. Lucullus and L. Annius, tribunes of the plebs, against the efforts of their colleagues strove to prolong their office, and this dissension put off the comitia through all the rest of the year")[2] it clearly designates the assembly of the plebs. His usage accordingly, which allows concilium sometimes to apply to an assembly of the whole people and comitia to an assembly of a part of the people, does not differ from that of Livy.

Cicero, however, is the author on whom scholars rely in support of the definition of Laelius. Following Berns,[3] they say Cicero has violated the rule but once, *Att.* i. 1. 1, in which occurs the phrase comitiis tribuniciis. Berns' examination of Cicero must have been exceedingly hasty, as he has left a number of instances unnoticed. The following passage is especially to the point, *Q. Fr.* ii. 14 (15 b). 4:

"The candidates for the tribuneship have made a mutual compact — having deposited five hundred sestertia apiece with Cato, they agree to conduct their canvass according to his direction, with the understanding that any one offending against it is to be condemned by him. If these comitia, then, turn out to be pure, Cato will have been of more avail than all laws and jurors put together."[4]

[1] Undoubtedly the Caesar who was consul in 64 B.C.; Teuffel and Schwabe, *Rom. Lit.* i. 348. § 3; Drumann-Gröbe, *Gesch. Roms*, iii. 120, n. 6.

[2] "P. Lucullus et L. Annius, tribuni plebis, resistentibus collegis continuare magistratum nitebantur, quae dissensio totius anni comitia impediebat."

[3] *De com. trib. et conc. pl. discr.* (1875); Mommsen, *Röm. Staatsr.* iii. 149, n. 1; Kornemann, in Pauly-Wissowa, *Real-Encycl.* iv. 802. The correctness of my results is acknowledged in the *Thesaurus linguae latinae*, iv. 44 ff.

[4] "Tribunicii candidati compromiserunt HS quingenis in singulos apud M. Catonem depositis petere eius arbitratu, ut, qui contra fecisset, ab eo condemnaretur. Quae quidem comitia si gratuita fuerint, ut putantur, plus unus Cato potuerit quam omnes leges omnesque iudices." The translation given above is Shuckburgh's.

The tribunician comitia are the only comitia concerned in Cato's transaction. Again in *Att.* ii. 23. 3 ("It is of great interest to me that you should be present at Rome, if not at the comitia for his election, at least after he has been declared elected")[1] Cicero is thinking of the election of Clodius to the tribuneship, and hence the comitia he refers to are the assembly of plebs. In *Fam.* viii. 4. 3, "aedilium plebis comitiis" must refer to the plebeian assembly, in which the plebeian aediles were elected.[2] Another important passage is *Sest.* 51. 109:

"I come now to the comitia whether for electing magistrates or for enacting laws. We often see laws passed in great numbers. I say nothing of those which are enacted in such a manner that scarcely five of each tribe, and those not from their own tribe, voted for them. He (Clodius) says that at the time of that ruin of the republic he carried a law concerning me, whom he called a tyrant and the destroyer of liberty. Who is there who will confess that he gave a vote when this law was passed against me? But when in compliance with the same resolution of the senate, a law was passed about me in the comitia centuriata, who is there who does not profess that then he was present, and that he gave a vote in favor of my safety? Which cause, then, is the one which ought to appear popular? That in which everything that is honorable in the city, and every age, and every rank of men agree? Or that to the carrying of which some excited furies fly as if hastening to a banquet on the funeral of the republic?"[3]

The law which Cicero dwells on with such bitterness at the beginning of this passage and recurs to at the end is the tribunician law which pronounced on him the sentence of exile; in this connection, therefore, comitia distinctly includes the plebeian assembly in its legislative capacity.

Even more telling is *Leg.* iii. 19. 44–45:

"They (our ancestors) forbade the enactment of laws regarding particular persons except by the comitia centuriata. For when the people are organized

[1] "Permagni nostra interest te, si comitiis non potueris, at, declarato illo, esse Romae."

[2] *Cf.* Mommsen, *Röm. Staatsr.* ii. 482.

[3] "Venio ad comitia, sive magistratuum placet sive legum. Leges videmus saepe ferri multas. Omitto eas, quae feruntur ita, vix ut quini, et ii ex aliena tribu, qui suffragium ferant, reperiantur. De me, quem tyrannum atque ereptorem libertatis esse dicebat illa ruina rei publicae, dicit se legem tulisse. Quis est, qui se, cum contra me ferebatur, inisse suffragium confiteatur? cum autem de me eodem ex senatus consulto comitiis centuriatis ferebatur, quis est, qui non profiteatur se adfuisse et suffragium de salute mea tulisse? Utra igitur causa popularis debet videri, in qua omnes honestates civitatis, omnes aetates, omnes ordines una mente consentiunt, an in qua furiae concitatae tamquam ad funus rei publicae convolant?"

according to wealth, rank, and age, they use more consideration in giving their votes than when summoned promiscuously by tribes. In our case, therefore, a man of great ability and of consummate prudence, Lucius Cotta, truly insisted that no act whatever had been passed regarding us; for in addition to the fact that those comitia had been held wholly under the fear of armed slaves, the comitia tributa could not legally pass capital sentences or privilegia. Consequently there was no need of a law to reinstate us, against whom exile had not been legally pronounced. But it seemed better both to you and to other most illustrious men that all Italy should show what it felt concerning that same person against whom some slaves and robbers declared they had passed a decree."[1]

Cicero is here contrasting the comitia centuriata, which recalled him, with the tribal assembly of the plebs, which pronounced the sentence of exile. Now as he was condemned by the plebeian assembly, it is clear that in this passage Cicero calls the plebeian assembly comitia. How Mommsen[2] can make this citation refer to his "patricio-plebeian" comitia tributa no one can possibly explain. In *Att.* iii. 12. 1, comitia expressly includes the tribunician elections. The same elections are twice called comitia in *Att.* iii. 14; and in iii. 13. 1, Cicero, again mentioning these comitia, says: "In tribunis plebis designatis reliqua spes est." From all these passages it becomes evident that Cicero regards the plebeian assembly as comitia. In many passages comitia seems to include all the elections of the year, of plebeian as well as of patrician magistrates; for the elections were usually held in the same season, and could not well be separated in thought.[3] In fact, according to Cicero's usage, comitia includes all kinds of national assemblies which do not come under the term contiones; cf. *Sest.* 50. 106:

"In three places can the judgment and the will of the Roman people be best discovered, in contio, in comitia, and in the gathering for the festivals and the gladiatorial shows."[4] Cf. also 54. 115; 59. 125.

[1] "Ferri de singulis nisi centuriatis comitiis noluerunt. Descriptus enim populus censu, ordinibus, aetatibus plus adhibet ad suffragium consilii quam fuse in tribus convocatus. Quo verius in causa nostra vir magni ingenii summaque prudentia, L. Cotta, dicebat nihil omnino actum esse de nobis; praeter enim quam quod comitia illa essent armis gesta servilibus, praeterea neque tributa capitis comitia rata esse posse neque ulla privilegii: quocirca nihil nobis opus esse lege, de quibus nihil omnino actum esset legibus. Sed visum est et vobis et clarissimis viris melius, de quo servi et latrones scivisse se aliquid dicerent, de hoc eodem cunctam Italiam quid sentiret, ostendere."

[2] *Röm. Forsch.* i. 161, n. 53.

[3] See list of citations for electoral assemblies, p. 133.

[4] "Tribus locis significari maxime populi Romani iudicium ac voluntas potest, contione, comitiis, ludorum gladiatorumque consessu."

The very phrase comitia populi (*Rep.* ii. 32. 56; *Div.* ii. 18. 42) implies the existence of other comitia, for instance comitia plebis. It is not strange, therefore, that Cicero should use the following expression; *Rep.* i. 33. 50: "The nobles who have arrogated to themselves this name, not with the consent of the people, but by their own comitia." [1] Here he makes it evident that there may be comitia of the nobles in contrast with the "consent of the people." Should the senate usurp the elective function, Cicero would not hesitate to call that small body comitia, as appears from his ironical expressions in *Phil.* xi. 8. 19 ("Quod si comitia placet in senatu haberi" and "Quae igitur haec comitia"), in which he anticipates imperial usage; cf. Vell. ii. 124; Tac. *Ann.* i. 15.

Furthermore he speaks of comitia, consisting of but seventeen tribes, for the election of sacerdotes; *Cael.* 8. 19; *Leg. Agr.* ii. 7. 18; *Ad Brut.* i. 5. 3 f.; 14. 1; *Fam.* viii. 12. 4; 14. 1.

From his point of view, a tribal assembly of the whole people was one which consisted of all thirty-five tribes, irrespective of the number present in the several tribes, irrespective, too, of the rank of those who attended. An assembly tributim of a part of the people, on the other hand, was one in which some of the tribes were unrepresented. All this is clearly expressed in *Leg. Agr.* ii. 7. 16 f.:

"For it orders the tribune of the plebs who has passed this law to elect ten decemvirs by the votes of seventeen tribes in such a way that he shall be decemvir whom nine tribes (a majority of the seventeen) have elected. Here I ask on what account he (the proposer of the law) has made a beginning of his measures and statutes in such form as to deprive the Roman people of their right to vote. . . . For since it is fitting for every power, command, and commission to proceed from the entire Roman people, those especially ought to do so which are established for some use or advantage of the people, in which case they all together choose also the man who they think will look out more carefully for the interest of the Roman people, and each one by his own zeal and his own vote assists to make a road by which he may obtain some individual benefit for himself. This is the tribune to whom it has occurred, more than to any one else, to deprive the entire Roman people of the right to vote, and to summon a few tribes, not by any fixed legal condition, but by the favor of sortition, to usurp the liberty of all." [2]

[1] "Qui (optimates) non populi concessu, sed suis comitiis hoc sibi nomen adrogaverunt."

[2] "Iubet enim tribunum plebis, qui eam legem tulerit, creare decemviros per tribus septemdecim, ut, quem novem tribus fecerint, is decemvir sit. Hic quaero, quam ob causam initium rerum ac legum suarum hinc duxerit, ut populus Romanus suffra-

Even if the tribes were represented by no more than five men each, and these men not voting in their own tribes, the assembly was nevertheless comitia tributa populi.[1] This distinction — recognized by Cicero and his contemporaries — between an assembly of the whole people as represented by all the voting divisions and an assembly of a part of the people as represented by some of the voting divisions, is incompatible with the distinction formulated by Laelius. Though an antiquarian might make much of the presence or absence of a few patricians, a man who lived in the present, as did Cicero, probably never troubled himself about such unpractical matters.[2]

From the evidence as to Cicero's usage given above, we must draw the following conclusions:

1. He often uses comitia to denote the plebeian tribal assembly, just as Livy does.
2. He regularly uses comitia to denote the assembly of seventeen tribes for the election of sacerdotes. In this respect his usage is the same as Livy's.
3. He is ready to call the senate comitia, should it usurp the elective function — an anticipation of imperial usage.
4. His distinction between an assembly of the whole people and an assembly of a part of the people is incompatible with the definition of Laelius.

Concilium is comparatively rare in Cicero's works. In a few cases he seems to make concilia include all kinds of organized national gatherings; cf. *Rep.* vi. 13 (3). 13: "Nihil est enim illi principi deo . . . acceptius quam concilia coetusque hominum iure sociati, quae civitates appellantur (Nothing is more agreeable to the Supreme Being than assemblies and gatherings of men which are joined in societies by law and which are called states"); *Fin.* iii. 19. 63: "Natura sumus apti ad coetus, concilia, civitates." In the first citation concilium must, and in the second it may, include all the citizens. Cicero could hardly mean that we are by nature adapted to assemblies of a part of

gio privaretur . . . Etenim cum omnes potestates, imperia, curationes ab universo populo Romano proficisci convenit, tum eas profecto maxime, quae constituuntur ad populi fructum aliquem et commodum, in quo et universi deligant, quem populo Romano maxime consulturum putent, et unus quisque studio et suffragio suo viam sibi ad beneficium impetrandum munire possit. Hoc tribuno plebis potissimum venit in mentem, populum Romanum universum privare suffragiis, paucas tribus non certa condicione iuris, sed sortis beneficio fortuito ad usurpandam libertatem vocare;" cf. *Imp. Pomp.* 15. 44; 22. 64.

[1] *Sest.* 51. 109.

[2] P. 301 f.

the people, or that nothing could be more satisfactory to the Supreme Being than the concilium plebis which interdicted him from fire and water. In *Fin.* ii. 24. 77 ("To me those sentiments seem genuine which are honorable, praiseworthy, and creditable, which may be expressed in the senate, before the people, and in every gathering and concilium") he could not be thinking simply of the plebeian assembly, for he placed far greater value on the opinions expressed in and by the comitia centuriata.[1]

From all that has been said it is evident that Cicero's usage as well as Sallust's does not differ from that of Livy. In fact no variation can be found in all the extant literature of the republic.[2] But it may be asked whether there was not a juristic tradition separate from the literary and preserving from early time the true distinction between the two words under discussion. A negative answer is compelled by the fact that history had its origin with jurisprudence in the pontifical college, that from the beginning historian and jurist were often united in the same person.[3] Hence the juristic usage was the same as the literary. It is thoroughly established, therefore, that in the late republic, as well as in the early empire, the distinction between comitia and concilium was not a distinction between the whole and a part; in fact, it becomes doubtful whether the definition of Laelius was known to the writers of this period.

The results thus far reached are of great importance; the definition of comitia and concilium formulated by Laelius has been set aside, and the ground prepared for the establishment of new definitions by induction. From the material afforded by the authors under discussion, the following conclusions relative to the general uses of the two words may be drawn:

[1] "Mihi quidem eae verae videntur opiniones, quae honestae, quae laudabiles, quae gloriosae, quae in senatu, quae ad populum, quae in omni coetu concilioque profitendae sint;" cf. *Leg.* iii. 19. 44, quoted p. 127.

[2] The writers not included in this discussion, as Nepos and the poets, contain nothing at variance with the results here reached. Gudeman's article on Concilium in the *Thes. ling. lat.* iv. 44–8, in most respects excellent, still retains the groundless distinction between republican and imperial usage.

[3] It will suffice here to mention the elder Cato; Livy xxxix. 40. 6: "Si ius consuleres, peritissumus;" Cic. *Senec.* 11. 38: "Ius augurium, pontificium, civile tracto." On the subject in general, see Pais, *Stor. d. Rom.* I. i. 68 and notes.

I. (*a*) The phrases comitia curiata, comitia centuriata, comitia tributa constantly occur; whereas (*b*) the phrases concilium curiatum (or -tim), concilium centuriatum (or -tim), concilium tributum (or -tim) cannot be found.

(*a*) The former is too well known to need illustration; (*b*) the latter may be sufficiently established by an examination of the references for concilium given in this chapter.

II. (*a*) Concilium may apply to a non-political as well as to a political gathering; (*b*) comitia is wholly restricted to the political sphere.

(*a*) Concilium is non-political in Cicero, *Div.* i. 24. 49 (deorum concilium); *Tusc.* iv. 32. 69; *N. D.* i. 8. 18; *Off.* iii. 5. 25; 9. 38: *Senec.* 23. 84; *Fin.* ii. 4. 12 (virtutum concilium); *Rep.* i. 17. 28 (doctissimorum hominum in concilio); *Sest.* 14. 32 (applied to the meeting of a collegium); Livy i. 21. 3 (Camenarum concilia); ii. 38. 4; xxvii. 35. 4.[1]

III. Within the political sphere, again, (*a*) concilium is the more general term, — it suggests neither organization nor lack of organization; whereas (*b*) comitia is restricted to the organized assembly.

(*a*) Concilium is the more general term in Cicero, *Fin.* iii. 19. 63; ii. 24. 77; *Rep.* vi. 13 (3). 13.[2] In all these citations concilia, denoting assemblies of the whole people, must certainly include organized meetings, without excluding the unorganized. In *Leg.* iii. 19. 42 ("Invito eo qui cum populo ageret, seditionem non posse fieri, quippe cui liceat concilium, simul atque intercessum turbarique coeptum sit, dimittere") concilium is probably the organized assembly. On the other hand, the concilium of all the people mentioned by Livy, i. 8. 1, may have been unorganized.

IV. Within the province of organized national gatherings, on the other hand, (*a*) comitia is the wider term, applying as it does to all assemblies of the kind, whatever their function; whereas (*b*) concilium as an organized national assembly is wholly restricted to legislative and judicial functions.[3]

[1] For citations of other authors, see Gudeman, in *Thes. ling. lat.* iv. 45.

[2] All three passages are quoted, p. 130 f.

[3] The classification of comitial functions into elective, legislative, and judicial follows Cicero, *Div.* ii. 35. 74: "Ut comitiorum vel in iudiciis populi vel in iure

(*a*) Comitia is used in its most general sense in Cicero, *Div.* i. 45. 103; ii. 18. 42 f.; 35. 74; *Tusc.* iv. 1. 1.[1]

V. (*a*) Applied to foreign institutions, comitia always designates electoral assemblies; (*b*) as at Rome, concilia are always legislative or judicial assemblies.[2]

(*a*) Comitia is used of foreign states in:

Caesar, *B. G.* vii. 67; Cicero, *Verr.* II. ii. 52. 128 (three occurrences), 129, 130; 53. 133; 54. 136; *Fam.* viii. 1. 2; Livy v. 1. 1; xxiv. 23. 1; 26. 16; 27. 1; xxxii. 25. 2; xxxiii. 27. 8; xxxiv. 51. 5.

(*b*) Foreign concilia are mentioned by:

Caesar, *B. G.* i. 18, 19, 30, 31, 33; iii. 18; v. 2, 6, 24, 56 f.; vi. 3, 20; vii. 1, 14, 15, 63, 75, 89; viii. 20 (Hirtius); Sallust, *Hist.* ii. 22; Nepos, *Tim.* iv. 2; Livy i. 6. 1; 50–52; iii. 2. 3; 10. 8; v. 1. 8; 17. 6; 36. 1; vi. 10. 7; vii. 25. 5; viii. 3. 10; ix. 45. 8; x. 10. 11; 12. 2; 13. 3; 14. 3; xxi. 14. 1; 19. 9, 11; 20. 1; xxiv. 37. 11; xxvi. 24. 1; xxvii. 9. 2; 29. 10; 30. 6; xxix. 3. 1, 4; xxxi. 25. 2.; 29. 1, 2, 8; 32. 3, 4; xxxii. 10. 2; 19. 4, 5, 9; 20. 1; 21. 2; 22. 3, 9, 12; xxxiii. 1. 7; 2. 1, 7; 3. 7; 12. 6; 16. 3, 5, 8; xxxiv. 41. 5; 51. 5; xxxv. 25. 4; 27. 11; 31. 3; 32. 3, 5; 33. 1, 4; 34. 2; 43. 7; 48. 1; xxxvi. 6. 3; 8. 2; 26. 1; 28. 7, 9; 31. 9, 10; 32. 9; 34. 1; 35. 7; xxxviii. 9. 11; 10. 2; 31. 1; 32. 3; 34. 5; 35. 1; xxxix. 33, 35, 36, 37, 48, 50; xli. 24; xlii. 6, 12, 38, 43, 44, 47; xliii. 17; xlv. 18. Most of these concilia are known to have been assemblies of the whole people, noble and common.[3]

VI. In the Roman state, in a great majority of cases comitia are electoral assemblies; in fact, the word may generally be understood to signify that kind of assembly, or simply elections, unless the context indicates a different meaning.

Comitia are electoral in:

Caes. *B. C.* i. 9; iii. 1, 2, 82; Sall. *Cat.* 24; *Iug.* 36, 37; Cic. *Imp. Pomp.* 1. 2; *Leg. Agr.* ii. 7. 18; 8. 20; 10. 26; 11. 27; 12. 31; *Mil.* 9. 24, 25; 15. 41; 16. 42; *Mur.* 1. 1; 17. 35; 18. 38; 19. 38; 25. 51; 26. 53; *Phil.* ii. 32. 80, 81; 33. 82; 38. 99; viii. 9. 27; xi. 8. 19; *Planc.* 3. 7, 8; 4. 9, 10; 6. 15;

legum vel in creandis magistratibus." In this volume, accordingly, "legislative" refers not merely to lawmaking in the narrower sense, but also to the passing of resolutions on all affairs, domestic and foreign, including necessarily the lex de bello indicendo.

[1] For separate lists of the elective and the legislative and judicial comitia, see VI (below), where will be found sufficient illustrations of (*b*).

[2] Only one instance of concilium as an elective body has been found; *Lex Iulia Municipalis*, in *CIL.* i. 206. 132: the election of magistrates "comitieis conciliove." The explanation is that the usage of some of the Italian municipia differed from the Roman, and the author of the law had to adapt his language to local custom. With this exception the inscriptions are in line with the literature.

[3] P. 124.

8. 21; 20. 49, 50; 22. 53, 54; *Verr.* I. 6. 17; 7. 19; 8. 22, 23; 9. 24, 25; 18. 54; II. i. 7. 19; Frag. A. vii. 48; *Rep.* ii. 13. 25; 17. 31; 31. 53; *Att.* i. 1. 1, 2; 4. 1; 10. 6; 11. 2; 16. 13; ii. 20. 6; 21. 5; 23. 3; iii. 12. 1; 13. 1; 18. 1; iv. 2. 6; 3. 3, 5; 13. 1; 17. 7; 19. 1; xii. 8; *Ad Brut.* i. 5. 3; 14. 1; *Fam.* i. 4. 1; vii. 30. 1; viii. 2. 2; 4. 3; 14. 1; x. 26; *Q. Fr.* ii. 1. 2; 2. 1; 11. 3; 15. 3; iii. 2. 3; 3. 2; Varro, *R. R.* iii. 2. 1; Nepos, *Att.* v. 4; Livy i. 32. 1; 35. 1; 60. 4; ii. 8. 3; 56. 1, 2; 58. 1; 60. 4, 5; iii. 6. 1; 19. 2; 20. 8; 24. 9; 30. 6; 34. 7; 35. 1, 7, 8; 37. 5, 6; 39. 8; 51. 8; 54. 9, 11; iv. 6. 9; 16. 6; 25. 14; 35. 6; 36. 4; 41. 2; 44. 1, 2, 5; 50. 8; 51. 1; 53. 13; 54. 8; 55. 4, 8; 56. 1; 57. 9; v. 9. 1, 8; 10. 10; 14. 1; 31. 1; vi. 1. 5; 22. 7; 35. 10; 36. 3, 9; 37. 4; 39. 5; 42. 9, 14; vii. 9. 4; 17. 10, 13; 19. 5; 21. 1; 22. 7, 11; viii. 3. 4; 13. 10; 16. 12; 20. 1; 23. 11, 14, 17; ix. 7. 12, 14; x. 5. 14; 11. 3; 15. 7; 16. 1; 21. 13; 22. 8; xxi. 53. 6; xxii. 33. 9, 10; 34. 1, 3, 9; 35. 2, 4; xxiii. 24. 3; 31. 7, 12; xxiv. 7. 11; 9. 5, 9; 10. 2; 11. 6; 43. 5, 9; xxv. 2. 3, 5; 5. 2; 7. 5; 41. 10; xxvi. 2. 2; 18. 4; 22. 2; 23. 1, 2; xxvii. 4. 1; 8. 1; xxviii. 10. 1, 4; 38. 11; xxix. 10. 1, 2; 11. 9, 10; xxx. 40. 5; xxxi. 49. 12; 50. 6; xxxii. 7. 8, 12; 27. 5, 6; xxxiii. 21. 9; xxxiv. 42. 3, 4; 44. 4; 53. 2; xxxv. 6. 2; 8. 1; 10. 1, 9; 20. 7; 24. 3; xxxvi. 45. 9; xxxvii. 47. 1, 6; xxxviii. 35. 1; 42. 1, 2, 4; xxxix. 6. 1; 23. 1; chs. 32, 39, 40, 41, 45; xl. 18, 37, 45, 59; xli. 6, 8, 14, 16, 17, 18, 28; xlii. 9, 28; xliii. 11, 14; xliv. 17.

Comitia are legislative or judicial in:

Cic. *Dom.* 28. 75; 30. 79; 32. 86; 33. 87; *Har. Resp.* 6. 11; *Mil.* 3. 7; *Phil.* i. 8. 19; x. 8. 17; xiii. 15. 31; *Pis.* 15. 35, 36; *Red. in Sen.* 11. 27; *Sest.* 30. 65; 34. 73; 51. 109; *Leg.* iii. 19. 45; *Rep.* ii. 31. 53; 35. 60; 36. 61; *Att.* i. 14. 5; ii. 15. 2; iv. 1. 4; xiv. 12. 1; Livy iii. 13. 9; 17. 4; 20. 7; 24. 17; 29. 6; 55. 3; vi. 36. 9; viii. 12. 15; xxv. 4. 6; xxvi. 3. 9, 12; xxxi. 6. 3, 5; xxxiv. 2. 11; xlii. 30; xliii. 16; xlv. 35.

As these lists are nearly exhaustive, they represent substantially the relative frequency of the two uses of comitia.

VII. (*a*) Rarely is either the centuriate assembly or the so-called patricio-plebeian tribal assembly termed concilium; (*b*) the plebeian tribal assembly is rarely termed comitia except when electoral.

The principal instances of the rare use of concilium under (*a*) are Livy i. 26. 5; 36. 6; iii. 71. 3; vi. 20. 11.[1] (*b*) In its legislative or judicial capacity the plebeian tribal assembly is called comitia in Cicero, *Leg.* iii. 19. 45; *Sest.* 51. 109; Livy iii. 13. 9; 17. 4; vi. 36. 9; xxv. 4. 6; xxxiv. 2. 11; xlv. 35.

This classification covers without exception all the cases in the authors under discussion. An attempt may now be made to trace the development of these uses.

[1] Discussed on p. 123 f.

The first thing to be considered is that whereas concilium is singular, comitia is plural. Undoubtedly it is a plural of the parts of which the whole is composed; in other words, the curiae, or centuries, or tribes were originally thought of as little assemblies, whose sum total formed the comitia. Comitia therefore always has reference to the parts — the voting units — of which the assembly is composed, whereas concilium as a singular views the assembly without reference to its parts. For this reason, whenever it is advisable to add a modifier to indicate the kind of organization of the assembly, comitia is always used. We find, accordingly, comitia curiata, comitia centuriata, and comitia tributa in common use, but never concilium curiatum (or -tim), concilium centuriatum (or -tim), or concilium tributum (or -tim). These last expressions, which are modern inventions, do not accord with the Roman way of viewing the assemblies. This consideration satisfactorily explains the first general use.[1]

As a non-political gathering is not made up of groups — similar to the voting divisions of the national assemblies — it cannot be called comitia. Concilium is the only term appropriate to it; hence we have the second general use of the two words.[2]

The same consideration makes concilium the more general term within the political sphere; the assembly it designates may be organized or unorganized, whereas comitia applies only to assemblies organized in voting divisions. This is the third general use.[3]

For explaining the four remaining uses it is necessary to inquire into the fundamental meaning of concilium. Although the etymology is uncertain, probability favors the ancient conjecture which derives it from "con-calare."[4] People could only

[1] P. 132. [2] Ibid. [3] Ibid.

[4] Fest. ep. 38: "Concilium dicitur a concalando, id est vocando." It is accepted by Curtius, *Griech. Etym.* 139; Vaniček, *Griech.-lat. etym. Wörterb.* 143; Walde, *Lat. etym. Wörterb.* 136. But Corssen, *Beitr. z. ital. Sprachk.* 41 f., rejects this etymology on the ground that it does not harmonize with all the meanings of the word and of its derivative "conciliare"; also Gudeman, in *Thes. ling. lat.* iv. 44. Corssen, analyzing it into con-cil-iu-m, and connecting -cil- with a root kal-, "to cover," supposes the original meaning to be simply "a joining together," "a union," — giving that signification which he considers primary. It is equally reasonable, however, to assume the development to be (1) "a calling together," (2) "a meeting for consultation," (3) "a natural union of individuals of any kind." In the third sense it is applied perhaps figuratively to inanimate things, especially the union of atoms to form objects, by Lucretius i. 183, 484, 772, 1082; ii. 120; iii. 805; cf. Ovid, *Met.* i. 710.

be called together for a purpose, which would most naturally be conversation, discussion, deliberation. Whatever may have been its origin, concilium certainly developed this meaning.[1] In the manuscripts and editions it is frequently interchanged with consilium,[2] and in the sources these two words are often placed in punning juxtaposition.[3] Possibly their close resemblance, founded on no etymological connection of the roots, helped create in concilium the idea of deliberation. At all events in the prose authors of the period under discussion this is the primary meaning. The deliberative character of most non-political concilia is very evident.[4] With this meaning the word could not designate an electoral assembly, which did not allow discussion;[5] it was restricted to legislative and judicial assemblies, in which the voting was preceded by deliberation. This is the fourth use.[6]

Rarely did a Roman writer have occasion to mention an election in a foreign state. Whenever he did so, however, he always used comitia. Most of the business of foreign assem-

[1] The meaning consultation, deliberation, clearly appears in Plaut. *Mil.* 597 ff.:

> "Sinite me priu' perspectare, ne uspiam insidiae sient
> Concilium quod habere volumus. Nam opus est nunc tuto loco
> Unde inimicus ne quis nostri spolia capiat consili.
> Nam bene consultum inconsultumst, si id inimicis usuist,
> Neque potest quin, si id inimicis usuist, opsit tibi;
> Nam bene (consultum) consilium surrupitur saepissume."

Also in 249, 1013: "Socium tuorum conciliorum et participem consiliorum"; Cic. *Rep.* 17. 28: "Doctissimorum hominum in concilio"; Caes. *B. C.* i. 19; Nep. *Epam.* 3. 5; Verg. *Aen.* ii. 89 (or consiliis); iii. 679; v. 75; xi. 234; Livy 1. 21. 3; see also II (*a*), p. 132, and Forcellini, *Lat. Lex.* ii. 347. It is never a chance crowd; *Diff.* ed. Beck, p. 47. 43: "Concilium est convocata multitudo, conventus ex diversis locis populum in unum contrahit, coetus fortuitu congregatur." The ancients understood this to be the meaning of the word; Varro *L. L.* vi. 43: "A cogitatione concilium, inde consilium," an unsuccessful though instructive guess; Fest. ep. 38: "Concilium dicitur a populo consensu;" Isid. *Etym.* vi. 16. 12: "Concilium a communi intentione ductum, quasi communicilium." This interpretation is supported by several glosses; φιλοποιεία (*Corp. Gloss. Lat.* ii. 471. 49), συμβούλιον (ibid. ii. 107. 5), coenobulium, caenobulium (ibid. iv. 321. 27). Lastly our derivative "council" points in the same direction. The meaning "deliberative assembly" has been accepted by Gudeman, in *Thes. ling. lat.* iv. 46, who has added citations from the whole range of Latin literature.

[2] Lodge, *Lex. Plaut.* i. 288; Gudeman, *Thes. ling. lat.* iv. 45.

[3] Cf. Gudeman, ibid. iv. 48.

[4] Cf. n. 1 and p. 132, II (*a*).

[5] P. 143.

[6] P. 132.

blies referred to by Roman writers was concerned with international affairs — was legislative — and hence foreign assemblies are usually termed concilia.[1] This consideration accounts for the fifth general use.[2]

The sixth [3] may be easily explained. The tendency was to restrict comitia to electoral assemblies, just as concilium was restricted to legislative and judicial assemblies, though this tendency never became a rule.

The seventh [4] may be accounted for by the fact that after the passing of the Hortensian Law, the centuriate comitia came to be almost wholly electoral, while the plebeian tribal gathering became the chief statute-making body in the state. Furthermore the assembly over which the tribunes presided was far more deliberative than any other. Hence the centuriate assembly became *the* comitia, and the plebeian tribal assembly *the* concilium.[5]

The cause of the error into which Laelius [6] fell is now apparent. Finding the plebeian tribal assembly frequently termed concilium and the centuriate assembly of the whole people generally termed comitia, he hastily concluded that comitia should be restricted to assemblies of the whole people and concilia to assemblies of a part of the people. This discussion has proved, against Laelius, that for the republic and for the age of Augustus the distinction between the two words was not a distinction between the whole and a part, and that all the uses of comitia and concilium in this period may be explained by two simple facts: (1) that whereas concilium is singular, comitia is plural; (2) that concilium suggests deliberation, discussion.

[1] The notion sometimes expressed that the word applies more appropriately to a body of representatives of the component states of a league is without foundation, though it is true that some foreign concilia are of this character.

[2] P. 133. [3] Ibid. [4] P. 134.

[5] Thus is explained a phenomenon for which Mommsen could find no adequate reason — that the so-called "patricio-plebeian" tribal assembly was more apt to be called concilium than were the comitia centuriata. The deliberative feature of the concilium also explains the close approach of the word to contio — another fact which Mommsen knew but did not understand.

[6] Cf. p. 131. Notwithstanding all the confidence reposed by the moderns in this utterance of Laelius, 'debet' suggests that he is proposing an ideal distinction rather than stating an actual usage.

A result of this inquiry is to banish the expressions "concilium tributum plebis" and "patricio-plebeian comitia tributa" — the former as impossible, the latter as unnecessary — from the nomenclature of Roman public law. There were but three forms of organized assembly — curiate, centuriate, and tribal — all equally entitled to the name "comitia." The difference between the "comitia tributa populi" and "comitia tributa plebis" was chiefly in the presidency, as will be shown in a later chapter.[1] Contio, on the other hand, denotes the listening or witnessing assembly, unorganized or organized but never voting, whereas concilium, overlapping contio and comitia, may include voting in addition to deliberation.

Mommsen, Th., *Röm. Forschungen*, i. 129-217; Berns, C., *De comitiorum tributorum et conciliorum plebis discrimine*; Soltau, W., *Altröm. Volksversammlungen*, 37–46; Humbert, G., *Comitia*, in Daremberg et Saglio, *Dict.* i. 1374 ff.; *Concilium*, ibid. 1432 f.; Liebenam, W., *Comitia*, in Pauly-Wissowa, *Real-Encycl.* iv. 679 ff.; Kornemann, E., *Concilium*, ibid. iv. 801 ff.; Vaglieri, D., *Concilium*, in Ruggiero, *Diz. ep.* ii. 566 ff.; see also indices s. Comitia, Concilium, in the works of Niebuhr, Schwegler, Lange, Mommsen, Marquardt, Willems, Herzog, etc. The authorities thus far named represent the usual theory as to the distinction between comitia and concilium based on the definition of Laelius Felix discussed in this chapter. A new view is presented by Botsford, G. W., *On the Distinction between Comitia and Concilium*, in *Transactions of the American Philological Association*, xxxv (1904). 21–32 — a paper reproduced with additions in the present chapter. See also Lodge, G., *Lexicon Plautinum*, i. 277 f. (Comitia), 289 (Concilium); Forcellini, *Totius Latinitatis Lexicon*, ii. 297 f. (Comitia), 347 f. (Concilium); Gudeman, *Concilium*, in *Thesaurus linguae latinae*, iv. 44–8.

[1] P. 286, 292, 301 f.

CHAPTER VII

THE CONTIO

Contio, derived from conventio,[1] originally signified "a coming together," "a meeting" of any kind. In an early stage of its history it must have been a general term for public assembly, especially comitia. This meaning appears most clearly in a passage of Macrobius,[2] in which, quoting the treatise of Lucius Julius Caesar on the Auspices, he declares (1) that on market days a contio cannot be called, (2) in other words, that on such days business cannot be transacted with the people, (3) that for this reason the Romans cannot hold comitia on market days. Cicero,[3] too, states with reference to a certain market day that "for two days no contio can be held"—for the day of the market and the one following. From the context it is evident that he, like Macrobius, is thinking of comitia, which, as is well known, could not legally meet on market days.[4] Doubtless in the conservative nomenclature of the pontiffs and augurs, quoted by Macrobius and Cicero, contio still included comitia; it must in fact have applied more particularly to the formal, voting assembly; for informal meetings were not forbidden on such days.[5] But in the time of Cicero this use of the word was

[1] Corssen, *Ausspr.* i. 51; ii. 683; Vaniček, *Griech.-lat. etym. Wörterb.* 184; Walde, *Lat. etym. Wörterb.* 140; cf. *SC de Bacch.* in *CIL.* i. 196. 23: "In conventionid"; Fest. ep. 113: "In conventione in contio"; *Commentaria Consularia*, in Varro, *L. L.* vi. 88; *Corp. Gloss. Lat.* v. 280. 13; vi. 270, s. v.

[2] *Sat.* i. 16. 29: "Contra Iulius Caesar XVI auspiciorum libro negat nundinis contionem advocari posse, id est cum populo agi, ideoque nundinis Romanorum haberi comitia non posse;" cf. p. 125 f.

[3] *Att.* iv. 3. 4: "Contio biduo nulla."

[4] Cf. Pliny, *N. H.* xviii. 3. 13: "Nundinis urbem revisitabant et ideo comitia nundinis habere non licebat, ne plebs avocaretur;" Fest. 173. 30–3.

[5] Cic. *Att.* i. 14. 1; *Lex Gen.* 81, in *CIL.* ii. Supplb. 5439: "In contione palam luci nundinis." Another illustration is the statement of Gellius, xv. 27. 3, that wills were made in comitia calata, in a contio of the people. Mommsen's assumption (*Röm. Staatsr.* i. 199 and n. 3) that no contio was held on a market day as a rule,

obsolete excepting in the archaic formulae of the sacerdotal colleges. In the political language of his age contio had come to be restricted to the non-voting assembly — either organized [1] or more commonly unorganized — summoned by a magistrate or a sacerdos,[2] and in this sense it will be used in the present volume. Still farther removed from its origin is the meaning "oration" delivered to the people in such a gathering.[3]

Because of the passive character of this form of assembly the magistrate admitted all who wished to attend, without inquiring whether they were citizens and in full possession of their political rights.[4] It might be composed either of soldiers [5] or of civilians, presided over in the field by the commander, in the city by any magistrate who had a right to hold comitia in their own or in another's name, including the king,[6] interrex, dictator, master of horse, and tribunes of the plebs;[7] also the quaestors [8]

to which there were exceptions, is altogether unsatisfactory. The passages cited refer to a law, not to a mere custom to be observed or not at the will of the magistrate. The contio which met on a market day must have been essentially different in nature from the contio which was forbidden for market days; cf. also Varro, *L. L.* vi. 93; Cic. *Rab. Perd.* 4. 11.

[1] The calata comitia curiata is termed contio by Gell. xv. 27. 3: "Quod calatis comitiis in populi contione fieret." Cicero, *Rab. Perd.* 4. 11 (cf. 5. 15) speaks of the witnessing comitia centuriata as contio, and the lustral centuriate assembly was similarly termed; *Censoriae Tabulae*, in Varro, *L. L.* vi. 87: "Conventionem habet qui lustrum conditurus est." A widespread idea (held by Karlowa, *Röm. Rechtsgesch.* i. 379; Liebenam, in Pauly-Wissowa, *Real-Encycl.* iv. 1149; Soltau, *Altröm. Volksversamml.* 37, and others) that all contiones were unorganized is therefore wrong.

[2] Fest. ep. 38.

[3] Cic. *Vatin.* i. 3; *Att.* xiv. 11. 1; 20. 3; xv. 2. 3; *Fam.* ix. 14. 7; x. 33. 2; Livy xxiv. 22. 1; Gell. xviii. 7. 6 f.; *Gloss. Corp. Lat.* ii. 114. 25; 269. 27; 575. 8.

[4] P. 150.

[5] Examples of military contiones are Caes. *B. G.* v. 48; vii. 52 f.; Livy i. 16. 1; ii. 59. 4 ff.; vii. 36. 9; viii. 7. 14; 31 f.; xxvi. 48. 13; xxx. 17. 9; xli. 10. 6; see also p. 202 f.

[6] Dion. Hal. iv. 37; v. 11. 2; Plut. *Popl.* 3; the candidate, too, for the regal office; Livy i. 35. 2.

[7] Cic. *Leg.* iii. 4. 10: "Cum populo . . . agendi ius esto consuli, praetori, magistro populi equitumque eique, quem patres prodent consulum rogandorum ergo; tribunisque, quos sibi plebes creassit . . . ad plebem, quod oesus erit, ferunto;" Varro, *L. L.* vi. 93: "Censor, consul, dictator, interrex potest (exercitum urbanum vocare)."

[8] Schol. Bob. 330; cf. Mommsen, *Röm. Staatsr.* I. p. xix. This passage proves that a quaestor could call a contio in his own right; and the same holds probable for the aediles.

and aediles,[1] the pontifex maximus and the rex sacrorum.[2] Necessarily the right belonged as well to all extraordinary magistrates, as the decemviri legibus scribundis, who possessed consular power within the city.[3] But promagistrates and any others who held an exclusively military imperium could summon neither the comitia nor the civil contio.[4] The censors held contiones for the taking of the census,[5] for imposing fines,[6] and for the lustration. In the last-named function the assembly was also called comitia centuriata or exercitus urbanus.[7] The quaestors, the curule aediles, and the plebeian aediles exercised their jurisdiction in contiones and comitia, which for this purpose they called not in their own name but by permission of a higher magistrate.[8]

As the contio did not, like the comitia, theoretically include all the people, any number of magistrates could simultaneously hold meetings of the kind.[9] A minor officer had no right to take charge of, or to summon the people from, a contio called by another. A higher officer exercised this right against a

[1] It is necessary to include them in the general statement of Messala, in Gell. xiii. 16 (17). 1, that the lower magistrates had the right; cf. the note above.

[2] Fest. ep. 38: "Contio significat conventum, non tamen alium, quam eum, qui a magistratu vel a sacerdote publico per praeconem convocatur." The sacerdos is the rex sacrorum as well as the supreme pontiff. It was necessary for the latter to hold judicial contiones; p. 259, 327. For the former, see Varro, *L. L.* vi. 28; Macrob. *Sat.* i. 15. 9–12; Serv. *in Aen.* viii. 654. Strictly the contiones of the rex sacrorum were calata comitia curiata; p. 155.

[3] Mommsen, *Röm. Staatsr.* i. 193. For a contio of the Xviri leg. scrib. see Livy iii. 34. 1. On the duumviri for presiding at the election of consuls in 43, see Dio Cass. xlvi. 45. 3. In the opinion of the Romans the tribunus celerum, an officer under the kings, possessed the right; Livy i. 59. 7; Dion. Hal. iv. 71. 6; 75. 1; Serv. *in Aen.* viii. 646; Pomponius, in *Dig.* i. 2. 2. 3: "Exactis regibus lege tribunicia." These authors suppose that L. Junius Brutus held an assembly in the capacity of tribunus celerum, whereas Cicero, *Rep.* ii. 25. 46, speaks of him as a private citizen.

[4] Mommsen, *Röm. Staatsr.* i. 193. But the promagistrate had a right to attend and to address a contio called for him outside the walls by a competent person; cf. Vell. i. 10. 4; p. 426 below.

[5] Varro, *L. L.* vi. 90. [6] Livy xliii. 16. 5. [7] Varro, *L. L.* vi. 93.

[8] For the quaestor, see *Com. Anq.* in Varro, *L. L.* vi. 91 f. For the curule aediles, Cic. *Verr.* i. 12. 36; v. 67. 173; Livy x. 23. 11; 31. 9; 47. 4; xxxv. 10. 11; 41. 9; Val. Max. vi. 1. 7; viii. 1. damn. 7; Pliny, *N. H.* xviii. 6. 42. For the plebeian aediles, Livy x. 23. 13; xxv. 2. 9; xxxiii. 42. 10; Gell. x. 6. 3; p. 290, 325 below; Mommsen, *Röm. Staatsr.* i. 196, n. 2 f.

[9] Messala, *De Auspiciis*, in Gell. xiii. 16 (15). 1.

lower; the consul, for instance, could take the meeting from the hands of any ordinary patrician magistrate,[1] though not of a tribune of the plebs. No one dared disturb a meeting of any kind under the presidency of the latter,[2] and at least in the late republic a tribune sometimes forbade a patrician magistrate to address an assembly;[3] but otherwise consuls and plebeian tribunes might hold simultaneous contiones.[4]

Sometimes the contio was summoned merely to witness a public act. The consuls called the people together outside the walls by the sound of the war-trumpet to see an execution for treason. On this occasion the citizens were arrayed in centuries on the Campus Martius, in an assembly called at once comitia centuriata and contio.[5] We hear of a similar execution of an astrologer or magician outside the Esquiline gate, according to a primitive custom;[6] and it was most probably in a contio that the supreme pontiff scourged to death a man who had wronged a Vestal.[7] The people gathered in the same kind of meeting to witness an oath,[8] a judicial process,[9] or the levy of a fine.[10] But it was preëminently the listening assembly, hence the definition offered by Gellius,[11] "To hold a contio is to address the people, without

[1] Messala, *De Auspiciis*, in Gell. xiii. 16 (15). 1.

[2] Dion. Hal. vii. 16. 4; 17. 5; 22. 2; x. 41; Cic. *Sest.* 37. 79; Livy iii. 11. 8; xxv. 3 f.; xliii. 16. 7–9; (Aur. Vict.) *Vir. Ill.* 65. 5; cf. Lange, *Röm. Alt.* i. 604, 826; p. 266 below.

[3] Cic. *Fam.* v. 2. 7: Q. Metellus Nepos forbade Cicero to address the people in contio on the occasion of his retiring from the consulship — a prohibition which Cicero declares was never before heard of. For another case, see Dio Cass. xxxviii. 12. 3; Lange, *Röm. Alt.* ii. 716; iii. 299 f.

[4] Lange's supposition (*Röm. Alt.* ii. 716) that by the holding of a contio a tribune could prevent a patrician magistrate's convoking comitia is not well founded. Livy, iv. 25. 1 ("Tribuni plebi adsiduiis contionibus prohibendo consularia comitia"), does not intend to express a constitutional principle; cf. Mommsen, *Röm. Staatsr.* ii. 289; Liebenam, in Pauly-Wissowa, *Real-Encycl.* iv. 1150.

[5] Cic. *Rab. Perd.* 4. 11: "Tune, qui civibus Romanis in contione ipsa carnificem, qui vincla adhiberi putas oportere, qui in Campo Martio comitiis centuriatis auspicato in loco crucem ad civium supplicium defigi et constitui iubes, an ego, qui funestari contionem contagione carnificis veto . . . qui castam contionem, sanctum Campum . . . defendo servari oportere;" cf. 5. 15.

[6] Tac. *Ann.* ii. 32.

[7] Fest. 241. 29; Livy xxii. 57. 3; Suet. *Dom.* 8; Dio Cass. lxxix. 9. 3 f.; cf. Mommsen, *Röm. Staatsr.* ii. 56, n. 4.

[8] Cf. Livy xli. 15. 10; *Lex Gen.* 81, in *CIL.* ii. Supplb. 5439.

[9] Livy iii. 66. 2; v. 11. 15; 12. 1; xxxviii. 52. 4; 53. 6. On the judicial contio, see p. 259.

[10] Livy xliii. 16. 5.

[11] XIII. 16. 13.

calling on them for a vote." It applied not only to the isolated meeting summoned to hear edicts, reports, communications of every kind, including arguments and appeals for or against a given policy,[1] but also to the preparatory stage of the voting assembly whether addresses were delivered or not. Occasionally in early times there was speaking on the merits of candidates at the opening of an electoral assembly, and the voting was sometimes interrupted for the purpose.[2] Before the age of Cicero this rare proceeding had disappeared. In his day the canvass for candidates had been made before the holding of the preliminary contio, which accordingly was brief and formal. Because much time was required for the voting of the centuries,[3] speaking on the day of their assembly had to be minimized. For this reason the contio for advising the adoption of a resolution by the comitia centuriata was held on an earlier day. Such was the meeting summoned in the Campus Martius by the consul P. Lentulus for the purpose of urging the people to vote in the ensuing centuriate assembly for the recall of Cicero.[4] In judicial proceedings before any of the assemblies the testimonies of witnesses and the pleadings occupied the greater part of the time, and for this reason judicial assemblies were frequently termed simply contiones. They will be described in a later chapter.[5]

Informal contiones could be called at any time while the sun was up,[6] with or without[7] an interval between the summons and the meeting, and in any place[8] at the pleasure of the person

[1] Cic. *Att.* ii. 21. 5; *Verr.* i. 15. 44; *Sest.* 12. 29; *Rep.* i. 4. 7; Nep. *Tim.* iv. 3; *Them.* i. 3; Livy ii. 2. 4; 24. 4–6; 27. 2; iii. 31. 2; 41. 5 ff.; 54. 6; 67 f.; iv. 15; xli. 10. 13.

[2] Livy x. 13, 21; (Cic.) *Herenn.* iv. 55. 68. A contio, described by Livy vi. 39–41, was held by the tribunes Licinius and Sextius in the ninth year of their tribunate, after the day of election for the following year had been set. This meeting however was as much for the consideration of the proposed laws as of their own candidacy, and hence could not be thought of as strictly pertaining to the election. Mommsen's opinion (*Röm. Staatsr.* iii. 392, n. 1) that stories of the kind prove nothing does not accord with his own general attitude toward the sources for the earlier history of Rome.

[3] P. 470.

[4] Cic. *Sest.* 50. 107 f.; *Rea. in Sen.* 10. 26; *Pis.* 15. 34.

[5] P. 259 f.

[6] Livy xxxix. 17. 4 f.; Plut. *Aem.* 30; Pseud. Sall. *Declam. in Cat.* 19; cf. the *Twelve Tables*, in *Censorin.* 24. 3.

[7] Livy xlii. 33. 2.

[8] Besides the Forum or Comitium (Dion. Hal. ix. 41. 4) it sometimes met in the Area Capitolina (Cic. Frag. A. vii. 49; Livy xxxiii. 25. 6; xxxiv. 1. 4), or in the Circus

who convoked them. In public assemblies of every kind the people remained standing throughout the session.[1] The magistrate who was about to summon an auspicated contio repaired to the templum which he intended to occupy during the meeting.[2] After taking the auspices there, and finding the omens favorable, he ordered the crier to call the citizens.[3] His directions to this assistant were prefaced by a solemn wish that the gathering of the citizens might be well, fortunate, auspicious, and advantageous to the Roman people, the commonwealth, himself, his colleague or colleagues, and his magistracy.[4] After first issuing the summons from the templum the crier repeated it while making the circuit of the walls.[5] Meantime the presiding officer invited the senators, his colleague or colleagues, and the various other magistrates to assist him with their presence and advice.[6] The invitation was extended even to opposing tribunes;[7] and on the other hand a presiding tribune was especially anxious to secure the presence and favorable influence of patrician magistrates and of the leading men of the state.[8] When the president saw his friends about him and the people gathered, he called the contio to order,[9] and proceeded to open the meeting with a

Flaminius (Livy xxvii. 21. 1; Cic. *Att.* i. 14. 1; *Sest.* 14. 33). In general, see Liebenam, in Pauly-Wissowa, *Real-Encycl.* iv. 1151; Karlowa, *Röm. Rechtsgesch.* i. 380.

[1] Cic. *Flacc.* 7. 16 (contrasting the sitting contio of the Greeks); *Brut.* 84. 289; *Leg. Agr.* ii. 5. 13; *Acad. Pr.* 47. 144; *Tusc.* iii. 20. 48; *Orat.* 63. 213. But probably the contio in the Flaminian circus was seated; Mommsen, *Röm. Staatsr.* iii. 396, n. 3.

[2] P. 107, 110. Although the tribune of the plebs did not auspicate their assemblies, they like other magistrates occupied a templum during the meeting; Livy ii. 56. 10.

[3] *Censoriae Tabulae*, in Varro *L. L.* vi. 86. For the summons by the consul, see the *Commentaria Consularia*, ibid. 88; and by the quaestor, *Commentarium Anquisitionis* of M. Sergius, ibid. 91.

[4] Varro, *L. L.* vi. 86.

[5] *Censoriae Tabulae*, in Varro, *L. L.* vi. 87: "Praeco in templo primum vocat, postea de moeris item vocat;" cf. 90 f.; Livy xxxix. 32. 11; Cic. *Fam.* vii. 30. 1.

[6] Documents, in Varro, *L. L.* vi. 86, 91.

[7] Livy xxv. 3. 17; Cic. *Sest.* 50. 107 f.

[8] Caesar, a praetor and friend of the presiding tribune, sat with him on the porch of the temple of Castor and Pollux — used on that occasion as the speaker's platform; Plut. *Cat. Min.* 27; Cic. *Vatin.* 10. 24: "In rostris, in illo, inquam, augurato templo ac loco . . . quo auctoritatis exquirendae causa ceteri tribuni pl. principes civitatis producere consuerunt."

[9] Documents, in Varro, *L. L.* vi. 88, 91; cf. 93.

prayer.[1] In the case of a resolution to be brought before the assembly the magistrate was accustomed first to submit it to the senate, which considered the bill and perhaps suggested alterations;[2] but sometimes measures were brought into the comitia without this senatorial deliberation.[3] In the contio the presiding officer had power to exclude or to limit discussion of his proposals. Ordinarily he found it advantageous to instruct the people regarding the subject on which they were to vote; and it was for this purpose that one or more contiones were held previous to the comitia. The right to address the people belonged primarily to the presiding magistrate. Although the king enjoyed the superior right, the notion that in the regal period no private persons spoke in the assembly seems to be unwarranted.[4] The custom of the republic prescribed that the president should grant the privilege not only to his colleagues[5] but also to all the

[1] Livy xxxix. 15. 1: "Consules in rostra escenderunt, et contione advocata cum solemne carmen precationis, quod praefari, priusquam populus adloquantur, magistratus solent, peregisset consul, ita coepit: Nulli umquam contioni, quirites, tam non solum apta sed etiam necessaria haec sollemnis deorum comprecatio fuit." The prayer was made at the opening of elective as well as of deliberative assemblies (Cic. *Mur.* 1; Plin. *Paneg.* 63) by plebeian as well as by patrician magistrates; (Cic.) *Herenn.* iv. 55. 68. Every speech addressed to the people began with a prayer; Serv. *in Aen.* xi. 301; Cic. *Caecil.* 13. 43; Gell. xiii. 23. 1; Mommsen, *Röm. Staatsr.* iii. 390, n. 2.

[2] P. 430, 439.

[3] Caesar first brought his agrarian bill before the senate; and calling on the senators one after another by name to say whether they found any fault with it, he promised to amend it or to drop it altogether, if any clause proved unsatisfactory to any member. As the senators would not debate the merits of the proposal, but did all they could to delay its consideration, he offered the bill to the assembly without their consent; and for the remainder of his consulship he brought no more bills before the senate, but referred them directly to the people; Dio Cass. xxxviii. 2–4; cf. p. 148.

[4] Dion. Hal. v. 11. 2; Plut. *Popl.* 3. Besides the king it was supposed that the interrex and the tribunus celerum alone were competent; Dion. Hal. iv. 71. 6; 75. 1. The ancient writers seem to have been brought to this conception by a desire to contrast the despotism of the monarchy with the liberty of the republic. But according to Livy, i. 16. 5 ff., and Cicero, *Rep.* ii. 10. 20 (cf. Mommsen, *Röm. Staatsr.* i. 200, n. 6) Proculus Julius, a private person, made a speech in a contio of the regal period; and in judicial assemblies speaking by private persons was necessary; cf. Livy i. 26. For the general usage in the primitive European assembly, see p. 169.

[5] In presenting his agrarian bill to the people Caesar first called on his colleague, despite the fact that the latter was known to be opposed to the measure; Dio Cass. xxxviii. 4. 1.

higher magistrates.[1] In some cases the invitation was extended to senators[2] and to other distinguished private persons.[3] The tribunes sometimes gave the privilege to freedmen,[4] to foreign kings,[5] and to ambassadors.[6] The early republic did not allow women to be present in political meetings;[7] but in time this severity began to relax. Livy[8] represents the elder Cato as saying that his generation permitted women to take part in affairs of state and to interfere in contiones and comitia — evidently an exaggeration, as the context proves that the women referred to did not actually come into the assembly, and the speaker intimates that custom disapproved of their doing so.

[1] *Commentarium Anquisitionis*, in Varro, *L. L.* vi. 91. Clodius, tribune of the plebs, brought forward the two consuls into the Flaminian circus, where they gave their sanction and formal approval of all the tribune had been saying against Cicero; Cic. *Sest.* 14. 33. On this occasion the consul Piso condemned Cicero's consulship for its cruelty; Cic. *Pis.* 6. 14; *Red. in Sen.* 6. 13. In 44 Cannutius, a tribune of the plebs, introduced into a contio the consul Mark Antony, who spoke regarding the assassins of Caesar; Cic. *Fam.* xii. 3. 2. Earlier instances are Livy iii. 64. 6; iv. 6. 1 f. A tribune brought the augurs into a contio, to ask of them information concerning the auspices; Cic. *Dom.* 15. 40.

[2] Although the senators were invited to sit on the platform (*Comm. Anq.* in Varro, *L. L.* vi. 91), speaking by them was exceptional; in the assembly they were no more than eminent private persons; Dio Cass. xxxviii. 4. 4; cf. ch. 5.

[3] E.g. Cic. *Att.* iv. 1. 6: "Habui contionem. Omnes magistratus praesentes praeter unum praetorem et duos tribunos dederunt." In a certain contio a tribune asked Scipio Aemilianus what he thought of the conduct of Ti. Gracchus; Val. Max. vi. 2. 3. At the suggestion of the consul Piso, Fufius, a tribune, brought Pompey upon the platform and asked his opinion as to the selection of jurors for a particular case; Cic. *Att.* i. 14. 1; cf. Ascon. 50. The tribune M. Servilius invited Cicero to speak in a contio in support of C. Cassius (Cic. *Fam.* xii. 7. 1), and it was in response to an invitation of another tribune, P. Appuleius (*Phil.* vi. 1), that he delivered the sixth *Philippic*. Other references to tribunician invitations are Cic. *Att.* xiv. 20. 5; Dio Cass. xlv. 6. 3.

[4] Ascon. 38.

[5] Sall. *Iug.* 33 f.

[6] The Rhodian ambassadors were introduced by the tribune Antony to the senate (Polyb. xxx. 4. 6), as the context (cf. § 8) indicates, not as Mommsen, *Röm. Staatsr.* ii. 313, n. 1, supposes, to the people. There is no question, however, as to the right of a magistrate to bring such persons before the popular assembly.

[7] Val. Max. iii. 8. 6: "Quid feminae cum contione? Si patrius mos sevetur, nihil." The lex Horatia, which is alleged to have granted the Vestal Gaia Taracia among many honors the right to give testimony [Gell. vii (vi). 7. 1–3], and which is assigned by Cuq (*Inst. jurid. d. Rom.* i. 255; and in Daremb. et Saglio, *Dict.* iv. 1145) to the consul Horatius, 509, is a myth (Lange, *Röm. Alt.* ii. 608), though doubtless in the course of the republic laws of the kind were occasionally passed, the language of which might be quoted by the annalists (Gell. l. c.). The rule that women were intestabiles is proved by such exceptions.

[8] XXXIV. 2. 11.

From the time of the Gracchi they occasionally spoke in public. Dio Cassius[1] states that Tiberius Gracchus brought his mother and children into a contio to join their entreaties with his; and according to Valerius Maximus[2] a tribune of the plebs required Sempronia, sister of the Gracchi, to come forward in a similar meeting and give her opinion on the subject under consideration. In the year 43 some ladies attended a contio to protest against being taxed by the triumvirs. Hortensia spoke for the complainants.[3] It was an accepted custom that no tribune should intercede against a measure till an opportunity had been afforded private persons to speak for or against it.[4] When after the victory of Pydna a tribune of the plebs had introduced a motion to grant a triumph to Aemilius Paulus, and the debate had been thrown open to the assembly, all for a time remained silent, for no doubt was entertained as to its passing; but finally Servius Galba, who as a military tribune had served under Paulus and was his enemy, came forward and obstructed the measure by a long harangue.[5] Although the president could, and perhaps often did, throw the debate open to the citizens in this way, he was not compelled to do so. The tribunician assembly was more deliberative than any other — a circumstance which accounts for its designation as a concilium.[6] Those invited to speak, if citizens, had to be of good standing and not under disqualification through a special law or usage. The rex sacrorum was prohibited not only from holding any other office but also from addressing an assembly.[7] The spendthrift[8] and the man condemned for extortion[9] were likewise forbidden. When the right was granted as a special distinction, the receiver was probably placed thereby on a footing of equal dignity with the magistrates.[10]

[1] Frag. 83. 8. [2] III. 8. 6.

[3] Appian, *B. C.* iv. 32–4; see also p. 326. [4] Livy xlv. 21. 6; 36. 1.

[5] Livy xlv. 36; cf. the statement of Dion. Hal. x. 41. 1, that on a certain occasion the crier invited all who wished to speak. These two passages are credible, notwithstanding the doubt expressed by Mommsen, *Röm. Staatsr.* iii. 395, n. 2, if we regard the general invitation as a concession on the part of the presiding magistrate rather than as a right of the people. [6] P. 136. [7] Plut. *Q. R.* 63.

[8] Quint. *Inst.* iii. 11. 13: "Qui bona paterna consumpserit, ne contionetur."

[9] (Cic.) *Herenn.* i. 11. 20; cf. *Lex Bant.* (133–118 B.C.) in *CIL.* i. 197. 2 f.

[10] Such a grant in Alexandria Troas, mentioned by *CIL.* iii. 392, Mommsen (*Röm. Staatsr.* i. 201, n. 3) believes to have been in imitation of Roman usage.

The president could also compel a citizen to speak. The holder of the imperium had a right to summon any man into a public meeting, and order him to answer any question put to him.[1] Tribunes of the plebs, however, who lacked the power of summoning, exercised this coercive function against citizens and even consuls, not through a direct right but by a usurpation, probably based on their power to arrest and imprison.[2]

The president extended permission by asking a man to give his opinion on the subject under discussion, and it was not in good order even for a magistrate to address the assembly unless invited, though he had ground for resentment if he was passed over in favor of private persons.[3] When Caesar as consul, 59, brought his agrarian bill before the comitia without the consent of the senate and in spite of its silent disapproval,[4] he first asked his colleague whether he had any objection to the proposal. Bibulus offered none but declared that he would allow no innovation during his consulship. Thereupon Caesar begged him for support, and requested the people to join in the entreaty, saying, "You will have the law on the sole condition that he is willing." Then Bibulus, answering in a loud voice, "You will not have this law the present year, even if all of you want it," left the assembly. Slighting the other magistrates, Caesar invited Pompey and Crassus to address the meeting, though they were but senators and therefore, as contrasted with

[1] Varro, *Rer. hum.* xxi, in Gell. xiii. 12. 6.

[2] Ibid.; cf. Val. Max. iii. 7. 3: "C. Curiatius tr. pl. productos in contionem consules compellebat ut de frumento emendo referrent." Mommsen's interpretation (*Röm. Staatsr.* ii. 313, n. 2), that the tribunes could not summon the consuls but could compel them to speak when present, is not altogether satisfactory. The comment of Gellius (§ 7 f.: "Huius ego iuris, quod M. Varro tradit, Labeonem arbitror vana tunc fiducia, cum privatus esset, vocatum a tribunis non isse. Quae, malum, autem ratio fuit vocantibus nolle obsequi, quos confiteare ius habere prendendi? Nam qui iure prendi potest, et in vincula duci potest") supports the view given above in the text. A magistracy might afford some degree of protection, but on the principle enunciated by Gellius the tribune, who had the power to arrest a consul, was in a position practically to compel him to appear at a public meeting. As further examples of the president's power to force speaking, Cato, a tribune of the plebs, compelled the keepers of the Sibylline books to come before the people in contio and declare the prophecy; Dio Cass. xxxix. 15. 4; cf. also Cic. *Vatin.* 10. 24; *Att.* ii. 24; Plut. *Cic.* 9; Dio Cass. xxxvi. 44. 1.

[3] P. 146.

[4] P. 145, n. 3.

magistrates, merely private citizens. After Pompey had spoken at length, commending the details of the law, Caesar asked if he would support it against opponents, at the same time requesting the people to beg of him this favor. They did so, doubtless by acclamation; and Pompey, greatly flattered because the consul and the people besought help of him, a private citizen, promised to stand by the law.[1]

A magistrate spoke from the platform, a private person from a lower position, presumably from one of the steps; for the chairman to bring a private speaker upon the stage was a cause of offence to his colleagues.[2] When the president granted an opportunity to speak, he had a right to fix the amount of time to be used. In the debate on the law for assigning provinces to Caesar and Pompey, 55, the presiding tribune granted one hour to Favorinus and two hours to Cato, both opponents of the measure.[3] The speaker could use the time in whatever way he pleased; a few persons by concert might waste the whole day in trivialities, as is sometimes done in the senate of the United States of America, so as to prevent voting on the subject for that date. In the case above mentioned Favorinus, doubtless for lack of real argument, exhausted his hour in lamentation over the shortness of the time allowed him,[4] and Cato spent his two hours on irrelevant or minor matters, merely that he might be silenced by the president while still appearing to have something to say. He persisted in speaking accordingly till an officer dragged him from the rostra and ejected him from the Forum. Even then he returned several times to interrupt the proceedings with his shouting.[5] If the speaker approved the measure, he might close with the words, "This law of yours and your purpose and sentiments I praise and most heartily approve";[6] or more formally, "In my opinion

[1] Dio Cass. xxxviii. 2–5.

[2] Cic. *Att.* ii. 24. 3: "Caesar, is qui olim praetor cum esset, Q. Catulum ex inferiore loco iusserat dicere, Vettium in rostra produxit;" *Vatin.* 10. 24: "Cum L. Vettium . . . in contionem produxeris, indicem in rostris, in illo, inquam, augurato templo ac loco collocaris, quo auctoritatis exquirendae causa ceteri tribuni pl. principes civitatis producere consuerunt."

[3] Dio Cass. xxxix. 34. 2; Plut. *Cat. Min.* 43.

[4] Or as Foster translates, "about the distressing condition of the times."

[5] Dio Cass. xxxix. 34; Plut. ibid.

[6] Cic. *Imp. Pomp.* 24. 69.

this bill as presented ought to be passed, and may it prove well, auspicious, and fortunate both to yourselves and to the republic";[1] or if opposed to the proposition, he might conclude with this form of disapproval, "It is my judgment that this law should by no means be repealed."[2]

Sometimes the magistrates were invited in the order of their rank and afterward private citizens; in other cases, especially in tribunician contiones, private persons were called first that they might speak with perfect freedom, uninfluenced by the opinion of their magistrates.[3] As the president had absolute control, he could alter the usage to suit his own interest, and could certainly reserve to himself the advantage of speaking last.[4] It often happened that there was not enough time in one day for the discussion of a question. In that case the magistrate adjourned the meeting to a specified date.[5]

After the deliberation, or after the formality of opening the contio which was merely preliminary to the comitia, the president ordered the assembly to form into voting groups — curiae, centuries, or tribes. He could say, for instance, "I order you to take your proper places in the comitia centuriata,"[6] or more generally, "If you think fit, quirites, move apart (into your voting groups)."[7] At the same time he ordered the departure of all who lacked the qualification for voting.[8] The lictors of the magistrates with imperium and the beadle (viator) of the tribune attended to clearing away the unqualified.[9]

[1] Livy x. 8. 12. [2] Ibid. xxxiv. 4. 20. [3] Dio Cass. xxxix. 35. 1. [4] Ibid.

[5] Livy ii. 56. 9: "Quirites, . . . crastino die adeste."

[6] *Commentaria Consularia*, in Varro, *L. L.* vi. 88: "Impero qua convenit ad comitia centuriata." [7] Livy ii. 56. 12: "Si vobis videtur, discedite, quirites."

[8] Preparatory to voting, the plebeian tribune Laetorius ordered the removal of all, including patricians, who were not to vote; Livy ii. 56. 10: "Submoveri Laetorius iubet praeterquam qui suffragium ineant."

[9] In the case referred to in the note above, some of the young patricians stood their ground and refused to give way before the viator; § 11; cf. Dion. Hal. ix. 48. Again on other occasions the patricians when ordered refused to withdraw before the voting (cf. Livy iii. 11. 4), from which we may infer that the right to attend the comitia presided over by tribunes was claimed by the patricians but denied them by the tribunes. The word used in these passages to designate the removal of the unqualified is "submovere." In Livy xxv. 3. 16 (cf. Cic. *Flacc.* 7. 15) "tribuni populum summoverunt" has reference to the adjournment of the people to their voting divisions, and probably also to the exclusion of those who had no right to vote; cf. Mommsen, *Röm. Staatsr.* iii. 390, n. 1.

Schulze, C. F., *Volksversammlungen der Römer*, 141 ff., 243 ff. ; Rubino, J., *Röm. Verfassung und Geschichte*, 240–53 ; Lange, L., *Röm. Altertümer*, ii. 715–23, and see indices s. v. ; Mommsen, Th., *Röm. Staatsrecht*, i. 191–209 ; iii. 370–8, and see index s. v. ; Willems, P., *Droit public Rom.* 158 f. ; Herzog, E., *Röm. Staatsverfassung*, i. 632–6, 1057 f., and see index s. v. ; Karlowa, O., *Röm. Rechtsgeschichte*, i. 48 f., 379–81 ; Madvig, J. N., *Verf. u. Verw. d. röm. Staates*, i. 219 ; Soltau, W., *Altröm. Volksversammlungen*, 37 ff. ; Humbert, G., *Contio*, in Daremberg et Saglio, *Dict.* i. 1484 f. ; Liebenam, W., *Contio*, in Pauly-Wissowa, *Real-Encycl.* iv. 1149–53 ; Ruggiero, *Diz. ep.* ii. 1185, s. Contio ; Lodge, G., *Lex. Plaut.* i. 307, s. Contio ; Forcellini, *Tot. Lat. Lex.* ii. 349 f., s. Concio ; Dupond, A., *Constitution et magistratures Rom.* 60–3 ; Ihne, *History of Rome*, iv. 40–2.

CHAPTER VIII

THE CALATA COMITIA

In seeking for the origin and primitive character of the Roman assembly we are enabled by comparative study to reach a stage of growth far anterior to the beginnings of Roman tradition. In its earliest known form the European popular assembly had the following characteristics, provisionally enumerated here, but established in the next chapter: (1) the people who attended were the mass of freemen of a tribe, especially the warriors; (2) they stood or sat promiscuously, without reference to sub-tribal groups; (3) measures were proposed by none but chiefs or nobles, generally after previous discussion in council, the common members wholly lacking initiative; (4) the speakers were as a rule, though not exclusively, chieftains; (5) the vote was by acclamation, the clash of weapons, or some similar demonstration; as a correlate of (3) and (4) may be added, (6) sovereignty, so far as the idea existed, resided not in the assembly, which of itself could take no action, but in the king and chieftains, who made use of the assembly (*a*) for the publication of news or of projects, (*b*) for securing by their eloquence the coöperation of the tribe in a plan already formed in council. However far developed beyond this crude institution the comitia curiata or the comitia centuriata of the republican period may have been, traces of all the characteristics above mentioned may be found in the historical Roman assembly [1] — a fact which justifies the comparative method of approach to the subject.

We need not hesitate to begin with the unorganized contio as the earliest form of Roman assembly, to which we may attach the other features of the European gathering named above. The first problem is to determine under what influence and for

[1] Acclamation was retained as a regular form of voting by the army; p. 202; cf. Bernhöft, *Röm. Königsz.* 153.

what purpose the gathering of the people came to be organized in curiae. The notion that the object was primarily for voting is groundless. The Athenians had the germ of a tribal assembly in the division of the people by phylae on the occasion of ostracophory [1] and of the passing of other privilegia (*νόμοι ἐπ' ἀνδρί*). The organization was not in this case for the purpose of using the tribes as voting units, but merely for bringing order and solemnity to the proceeding. Apparently the assembly of Alamanni was arrayed in military form for ratifying emancipations,[2] though in the process the military companies did not vote as units. In like manner, but for a wider range of functions, we find at Rome the meeting of the people in curiae, less frequently in centuries, merely for listening, for witnessing, or for receiving purification. The circumstances that the business of such assemblies was largely religious, and of such a character that it must have originated in the earliest Roman times, and that in the greater number of cases these gatherings were under sacerdotal presidency suggest that the sacerdotes, particularly the pontiffs, introduced the curiate organization from the army to make their religious meetings more orderly and dignified.[3]

All assemblies which met under pontifical presidency for religious purposes were called calata,[4] evidently from "calare," a verb which must originally have been in common use in the sense of "to call," but which in historical time was restricted to

[1] Philochorus, 79 b, in Müller, *Frag. Hist. Graec.* i. 396. The condemnation of the generals who fought at Arginusae was voted in the same way; Xen. *Hell.* i. 7. 9.

[2] Cf. Schröder, *Deutsche Rechtsgesch.* 16.

[3] It is interesting in this connection that in the Homeric assembly the heralds (*κήρυκες*), who were a sacerdotal class, kept order; cf. *Il.* ii. 97 f. In the German assembly the priests with coercive power maintained quiet; Tac. *Germ.* ii. 3; Schröder, *Deutsche Rechtsgesch.* 22 f. The Irish assemblies were of religious origin, and maintained some religious features till after the introduction of Christianity; Ginnell, *Brehon Laws*, 42, 44.

[4] They excluded on the one hand comitia for religious purposes presided over by a political magistrate — for instance, the comitia centuriata under the censor for the lustrum (p. 141) — and on the other the meetings of the people under pontifical presidency for secular business, such as an appeal to the comitia from the pontifical imposition of fines (cf. Livy, xl. 42. 9), the meeting of the plebs under the supreme pontiff for the election of plebeian tribunes after the fall of the decemvirate (Cic. *Cornel.* in Ascon. 77; Livy, iii. 54. 5, 11), and the meeting of seventeen tribes for the election of sacerdotes. In the three exceptional instances last mentioned the comitia are tributa, which are never calata.

the technical language of the sacerdotes.[1] In the latter connection it designates the peculiar method of summoning used by the pontiffs.[2] Probably, at least in earlier time, their calatores acted as curiate lictors in convoking the calata comitia curiata,[3] over which they presided. In all meetings of the kind in the regal period the people were grouped in curiae; under the republic the centuriata comitia calata were also used for certain purposes.[4] The usual meeting-place of the calata comitia curiata was in front of the curia Calabra on the Capitoline Hill.[5] With reference to their object, they may be classed as non-voting and voting; the former were purely religious, the latter were for the settlement of questions which were in part civil.[6] First to be noted of the non-voting assemblies were those in which the people gathered in comitia under the presidency of the king,[7] in the republic under the rex sacrorum, to hear the proclamation of the fasti. On the calends of each month a

[1] Kindred words are calendae, Calabra, calator. As late as Plautus (*Pseud.* 1009; *Merc.* 852; *Rud.* 335) a common use of calatores was to designate slave messengers; cf. Fest. ep. 38; *Corp. Gloss. Lat.* ii. 95. 42: δοῦλοι δημόσιοι. This use became obsolete, but the word continued to apply to certain assistants of the sacerdotes; Serv. *in Georg.* i. 268; *Corp. Gloss. Lat.* ii. 96. 3; iv. 214. 1; [illegible]. 275. 1; 595. 34, 63; 563. 66; *CIL.* vi. 712, 2053. 5; 2184–90, 3878; x. 1726; also the *inscr.* recently discovered in the Forum; cf. Holzapfel, in *Jahresb. f. Altwiss.* 1905. 263, 265 ff.; Warren, in *Am. Journ. of Philol.* xxviii (1907). 249–72. In all the known instances they were freemen, often freedmen; Saglio, in Daremberg et Saglio, *Dict.* i. 814. For other citations, see Samter, in Pauly-Wissowa, *Real-Encycl.* iii. 1335 f. They correspond to the lictors of the magistrates.

[2] Varro, *L. L.* v. 13: "Nec curia Calabra sine calatione potest aperiri."

[3] Saglio, in Daremberg et Saglio, *Dict.* i. 814; Humbert, ibid. i. 1375. But the comitia curiata were convoked by lictors according to Gell. xv. 27. 2: "Curiata (comitia) per lictorem curiatum calari, id est convocari"; Theophilus, *Paraphr. Inst.* ii. 10. 1. Possibly the lictor curiatius (or curiatus; *CIL.* iii. 6078) should in this case be identified with the calator.

[4] Labeo, in Gell. xv. 27. 1 f.: "Calata comitia esse, quae pro collegio pontificum habentur aut regis aut flaminum inaugurandorum causa; eorum autem alia esse curiata, alia centuriata." From this statement we learn that the calate assemblies for inaugural purposes were organized either in curiae or in centuries. As "comitia" connotes organization (p. 135), we may be sure that in all calata comitia the people stood in their voting groups. On the centuriate comitia calata, see p. 156.

[5] Varro, *L. L.* v. 13; vi. 27; Fest. ep. 49; Macrob. *Sat.* i. 15. 9 f.; *Fast. Praenest. Kal. Ian.*, in *CIL.* i.^{2} p. 231; Jordan, *Top. d. Stadt Rom*, I. ii. 51; Rubino, *Röm. Verf.* 245, n. 1; Lange, *Röm. Alt.* i. 398 f.; Hülsen, in Pauly-Wissowa, *Real-Encycl.* iv. 1821.

[6] Humbert, in Daremberg et Saglio, *Dict.* i. 1376.

[7] He may have appointed a priestly substitute for such functions.

pontifex minor, as clerk of the college,[1] announced to them on what day, whether the fifth or seventh, the nones would come.[2] On the nones the king again summoned the people to hear the calendar of the month,[3] read probably by the same pontifex minor. This custom fell into disuse with the publication of the calendar in the Forum, beginning in 304.[4]

Equally passive were those comitia calata which under the presidency of the supreme pontiff witnessed the inauguration of the three flamines maiores,[5] probably of the king in the

[1] Livy xxii. 57. 3: "Scriba pontificis, quos nunc minores pontifices adpellant." That he acted in behalf of the college is proved by Varro, *L. L.* vi. 27 (note below).

[2] Varro, *L. L.* vi. 27: "Primi dies mensium nominati Kalendae, quod his diebus calantur eius mensis nonae a pontificibus, quintanae an septimanae sint futurae in Capitolio in curia Calabra"; *Hemerol. Praenest.* Ian. 1, in *CIL.* i.² p. 231: "Hae et (aliae pri) mae calendae appellantur, quia (eorum pri) mus is dies est quos pont(i)fex minor quo(vis anni) mense ad nonas sin(gulas currere edicit in capi)tolio in curia cala(bra)"; Macrob. *Sat.* i. 15. 9 f.: "Pontifici minori haec provincia delegabatur, ut novae lunae primum observaret aspectum visamque regi sacrificulo nuntiaret. Itaque sacrificio a rege et minore pontifice celebrato idem pontifex calata, id est vocata in Capitolium plebe iuxta curiam Calabram . . . quot numero dies a Kalendis ad Nonas superessent pronuntiabat." Serv. *in Aen.* viii. 654 and Plut. *Q. R.* 24 are inexact, and still more confused is Lyd. *Mens.* iii. 7; cf. Mommsen, *Röm. Staatsr.* ii. 39, n. 1. In the opinion of Mommsen the announcement on the calends was not to an assembly, but was merely preparatory to the assembly on the nones; but the words of Macrobius (vocata . . . plebe) clearly indicate a gathering of the people on that day.

[3] Varro, *L. L.* vi. 13, 28; Macrob. *Sat.* i. 15. 12; cf. Herzog, *Röm. Staatsverf.* i. 109 and n. 1. Mommsen, *Röm. Staatsr.* ii. 40, n. 2, warns us against confusing "this unorganized contio" with the comitia calata, which are always organized in curiae or in centuries. Labeo, in Gell. xv. 27. 1, states, however, that calata comitia were held for the inauguration of the king and priests. If for this occasion the purely passive assembly was organized in voting divisions, there can be no reason for doubting that it was organized also on the occasion in question, when it met in the assembly-place of the calata comitia — a place which could not be opened sine calatione — and its convocation was designated by "calare" not "vocare." It is significant that the phrase "calata contio" is never used. Mommsen gives no authority or reason for his assumption; cf. Lange, *Röm. Alt.* i. 398; Herzog, *Röm. Staatsverf.* i. 111; Marquardt, *Röm. Staatsv.* iii. 283, 323; Wissowa, *Relig. u. Kult. d. Römer*, 440, for the view here maintained that the assembly for hearing the calendar was calata.

[4] Macrob. *Sat.* i. 15. 9.

[5] For the inauguration of the flamen Dialis, see Gaius i. 130; iii. 114; Ulpian, Frag. 10. 5; Livy xxvii. 8. 4; xli. 28. 7; the flamen Martialis, Livy xxix. 38. 6; xlv. 15. 10; Macrob. *Sat.* iii. 13. 11; the flamen Quirinalis, Livy xxxvii. 47. 8; cf. Wissowa, *Relig. u. Kult. d. Römer*, 420, n. 3. The inauguration of augurs probably took place in their own college.

regal period, and certainly of the rex sacrorum under the republic.[1] As warlike Mars had his shrines outside the pomerium,[2] his chief temple being in the Campus Martius,[3] it is a probable conclusion that his flamen was inaugurated there — in the regal period in some form of military assembly, under the republic in the comitia centuriata.[4] The inaugural ceremonies were performed by an augur;[5] in the case of the sacerdotes it was the supreme pontiff who requested this service of him,[6] whereas the king could doubtless command an augur without the coöperation of the pontiff. A closely related function was the appointment of Vestals by lot, under the conduct of the supreme pontiff in a public assembly, probably the calata comitia.[7] The destatio sacrorum and the abjuration of social rank, other acts which these comitia merely witnessed, will be considered in connection with the transitio ad plebem and the adrogatio.[8] The ceremonies attended to by the rex sacrorum on March 24 and again on May 24 may have been in comitia calata, though this is doubtful.[9]

Assemblies of the people were organized in curiae by the pontiffs for the religious purposes mentioned above, while political measures, so far as submitted to the people, continued for a time, we may suppose, to be decided by din in contiones. But when a desire for a more precise vote began to be felt, the curiate organization naturally offered itself as most convenient for the purpose. The contention that in primitive Rome, as

[1] For the inauguration of the rex sacrorum, see Livy xxvii. 36. 5; xl. 42. 8. Livy's description of the inauguration of Numa (i. 18. 6–9) probably follows the historical usage in the case of the rex sacrorum.

[2] Serv. *in Aen.* vi. 859.

[3] Aust, *Relig. d. Römer*, 130.

[4] Mommsen, *Röm. Staatsr.* iii. 307, n. 1. This is the only function discovered for the calata comitia centuriata, mentioned by Labeo, in Gell. xv. 27. 2. The origin of the inauguration must have preceded that of the centuriate assembly; it must therefore have taken place for a time in some other form of meeting. Kübler, in Pauly-Wissowa, *Real-Encycl.* iii. 1331, objects to this interpretation but finds nothing better.

[5] Cic. *Brut.* 1 (of an augur); *Phil.* ii. 43. 110 (of a flamen); *Leg.* ii. 8. 21 (of sacerdotes); Macrob. *Sat.* iii. 13. 11 (of the flamen Martialis); Livy. i. 18. 6 (of the king).

[6] Fest. 343. 8; Wissowa, *Relig. u. Kult. d. Römer*, 420, n. 5, 421, n. 1.

[7] Gell. i. 12. 11, citing the lex Papia. Gellius calls this assembly a contio, which includes the calata comitia; cf. xv. 27. 3: "Calatiis comitiis in populi contione."

[8] P. 161, 163, 165.

[9] P. 157 f.

among other early peoples,[1] the assembly expressed its feeling or opinion by noisy demonstration finds strong support in the most probable derivation of suffragium, "vote," which connects it with frangere, fragor, "a breaking," "crash," "din," applause,"[2] the prefix sub- expressing the dependence of the action upon the proposal of the speaker, as in the military succlamare, succlamatio.[3] We may well believe that even after the organization of the assembly as comitia — that is, in curiate, centuriate, or tribal divisions[4] — the voting within the component groups continued for a time to be by din, as is suggested by the phrase sex suffragia, applied to the six oldest groups of knights in the comitia centuriata.[5] Voting by heads in large gatherings is in fact a slow, cumbersome process, the product of a well-developed political life. In all probability it originated in the centuriate assembly — in which the military array facilitated the taking of individual opinion[6] — and afterward extended to the other comitia. This line of reasoning suggests that when in the regal period a desire began to be felt for a more precise vote, and the curiate organization readily offered itself for the purpose, the expedient was adopted of taking the vote of each curia in order by din and then of deciding the question at issue by a majority of the thirty curial votes.[7] There can be little doubt that this step also was first taken by the pontiffs.

The testamentary calata comitia met twice a year, probably on fixed days.[8] It has been a disputed question whether the oldest form of testament here referred to required a vote of the people. Rubino[9] strongly upheld the negative on the ground (1) of analogy with the procedure in inaugurations, (2) of analogy with other forms of testament, none of which required a

[1] P. 170. [2] Quint. *Inst.* viii. 3. 3: fragor here signifies "thunders of applause."

[3] Cic. *Fam.* xi. 13. 3; Livy xxviii. 26. 12; xl. 36. 4; xlii. 53. 1.

[4] P. 135. [5] P. 74 f., 96. [6] P. 211.

[7] On the meaning of suffragium, see the excellent article by Rothstein, in *Festschrift zu Otto Hirschfelds 60stem Geburtstage*, 30–3.

[8] Gell. xv. 27. 3: "Isdem comitiis, quae calata appellari diximus, . . . testamenta fieri solebant"; Gaius ii. 101: "Calatis comitiis testamentum faciebant, quae comitia bis in anno testamentis faciendis destinata erant"; Theophilus, *Paraphr. Inst.* ii. 10. 1.

[9] *Röm. Verf.* 242–5, with notes, following J. H. Dernburg, *Beitr. zur Gesch. der röm. Testamente*, i. 53–78.

vote, (3) of the word testamentum itself, which refers to witnessing, (4) of the conviction that the patricians would not leave to the popular assembly the making of private law, (5) on the authority of Theophilus,[1] who mentions the people's witnessing of the testament, (6) on the statement of Gellius[2] that wills of the kind were made "in populi contione." Against this reasoning may be urged (1) the analogy from the adrogatio, (2) the analogy from the testamentary adoption, to both of which cases the simple testament was similar, and both of which required a vote of the people,[3] (3) the consideration that the act of witnessing in the assembly did not necessarily exclude a vote, (4) the statement of Gaius[4] that calata comitia were convoked "for making" — not for witnessing — testaments, (5) the circumstance that the contio was often a preliminary stage of the voting assembly[5] in addition to the fact that pontifical language applies the term to comitia in general.[6] These arguments offset all the points offered by Rubino, unless it be the fourth, which is a purely subjective consideration. Arguments (1), (2), and (4) are especially effective for establishing the fact of a vote in the case under consideration. But the problem can be most satisfactorily solved (6) by comparative investigation. In the constitution of the early Indo-European family the estate belonged jointly to all the male members, and for that reason could not be given away by the pater.[7] The primitive Germans accordingly made no wills, but left their property to their children, or in failure of children to the near kin.[8] In Attica the right to bequeath was instituted by a law of Solon, which allowed it to those only who had no legitimate sons;[9] in Sparta

[1] *Paraphr. Inst.* ii. 10. 1, p. 154 ed. Ferrini: Ὁ βουλόμενος ὑπὸ μάρτυρι διετίθετο τῷ δήμῳ.

[2] XV. 27. 3. This view is accepted by Lange, *Röm. Alt.* i. 398 f.; Schiller, *Röm. Alt.* 628; Soltau, *Altröm. Volksversamml.* 39; Mommsen, *Röm. Forsch.* i. 126, 239, 270; Madvig, *Röm. Staat.* i. 221; Kübler, in Pauly-Wissowa, *Real-Encycl.* iii. 1333; Mispoulet, *Inst. polit. Rom.* i. 202 f.

[3] P. 161. [4] II. 101. [5] P. 143. [6] P. 139.

[7] Schrader, *Reallex.* 221, 864; Leist, *Alt-arisch. Jus Gent.* 419; *Alt-arisch. Jus Civ.* ii. 171; Fustel de Coulanges, *Ancient City*, 104.

[8] Tac. *Germ.* 20. 5. The oldest Frankish laws make no mention of testaments; Schrader, ibid. 865.

[9] Demosth. xx. 102; Plut. *Sol.* 21; Telfy, in *CJA.* 1399–1412, with comment, p. 613 ff.

the right was introduced by Epitadeus, perhaps early in the fourth century B.C.[1] Testaments were unknown in Gortyn at the time when the *Twelve Tables* of this city were published,[2] and similar conditions existed in other states of Greece.[3] The rule holds, too, for ancient India.[4] The Slavic householder could not alienate his land without the consent of the community.[5] As there is no reason to assume a more advanced condition for primitive Rome, we may conclude that, as indicated above, the calata comitia not only witnessed but ratified testaments.[6]

Mommsen has attempted to fix these days as March 24 and May 24,[7] on which the rex sacrificulus performed comitial ceremonies not clearly described by the sources.[8] He admits, however, that the testamentary comitia met under the pontifex maximus rather than under the rex sacrorum[9] — a fact directly opposed to his contention. We should be surprised also to find the testamentary days so close together.[10] But the most effective argument against his view is that this function performed by the rex sacrorum could not have been the holding of comitia, for the time during which it continued was nefas.[11] The ancient

[1] Plut. *Agis*, 5; cf. Thumser, *Griech. Staatsalt.* 259.

[2] Bücheler und Zitelmann, *Recht von Gortyn*, 134.

[3] Aristot. *Polit.* 1309, a 24; cf. Thalheim, *Griech. Rechtsalt.* 61.

[4] Fustel de Coulanges, *Anc. City*, 105; Leist, *Alt-arisch. Jus Civ.* ii. 171.

[5] Schrader, *Sprachv. und Urgesch.* ii.[3] (1907). 374 f.

[6] This view is held by Schrader, ibid. 865; Ihering, *Geist des röm. Rechts*, i. 145 ff.; Mommsen, *Röm. Staatsr.* ii. 37 f.; iii. 318 ff.; Kappeyne van de Coppello, *Comitien*, 67; Poste, *Gai Inst.* 178; Hallays, *Comices*, 18; and with some hesitation by Herzog, *Röm. Staatsverf.* i. 110, 118, 1063.

[7] *Röm. Chronol.* 241 ff.; *Röm. Staatsr.* ii. 38, n. 2; iii. 319; *CIL.* i.[2] p. 289; accepted by Lange, *Röm. Alt.* i. 399; Kübler, in Pauly-Wissowa, *Real-Encycl.* iii. 1331; Marquardt, *Röm. Staatsv.* iii. 323.

[8] Q(uando) R(ex) C(omitiavit); *CIL.* i. p. 291 f. after the two days mentioned; cf. Varro, *L. L.* vi. 31: "Dies, qui vocatur sic, 'Quando Rex Comitiavit, Fas' is dictus ab eo quod eo die rex sacrifiolus litat (or perhaps venit, MS. dicat) ad comitium, ad quod tempus est nefas, ab eo fas; itaque post id tempus lege actum saepe"; Fest. ep. 259: "Quando Rex Comitiavit Fas, in fastis notari solet, et hoc videtur significare, quando rex sacrificulus divinis rebus perfectis in comitium venit"; Ovid, *Fast.* v. 727; Plut. *Q. R.* 63; *Fast. Praenest.* Mart. 24; for other citations, see *CIL.* i[2]. p. 289.

[9] *Röm. Staatsr.* ii. 38, n. 2.

[10] Herzog, *Röm. Staatsverf.* i. 110, n. 2.

[11] See note 8 above; cf. Wissowa, *Relig. u. Kult. d. Römer*, 440, n. 6.

authorities state that "the sacrificial king, after performing sacred rites, comes into, or makes a sacrifice in (venit or litat), the comitium,"[1] but they do not mention an assembly; hence we may infer that in the fasti for these days reference is to some other function than the holding of comitia. The form of testament above described fell early into disuse,[2] so that the conditions and ceremonies attending it became a subject of study for antiquarians.

Adoptions ordinarily came before the praetor. The legal object was the perpetuation of the family and its religion. The law granted the privilege accordingly to those only who had no children and who were incapable of having children. It required further that the act should not imperil the continuance of the family from whom the adopted came.[3] Adrogatio was the adoption of a person who was his own master and who accordingly consented to pass under the paternal power of another. The word signifies that the act to which it applies required a vote of the people.[4] It was not undertaken rashly or without careful consideration.[5] The persons concerned were required first to present the case to the college of pontiffs, who took into account "what reason any one has for adopting children, what considerations of family or dignity are involved, what principles of religion are concerned."[6] The age of the man who wished to arrogate was considered — whether in this respect he was capable of having children of his own, and care was taken that the property of the arrogated person should not be insidiously coveted.[7] The adrogator was asked whether he wished the candidate for adoption to be his real son, and the candidate was asked whether he would allow himself to be placed in this condition;[8] and the testimonies were confirmed by an oath formulated by Q. Mucius Scaevola.[9]

[1] See p. 159, n. 8 above. [2] Gaius ii. 101, 103.

[3] Cic. *Dom.* 13. 34; cf. Leonhard, in Pauly-Wissowa, *Real-Encycl.* i. 398 ff.

[4] Gell. v. 19. 4, 6 f.; Gaius i. 99; Cic. *Att.* ii. 12. 2; *Dom.* 15. 39.

[5] Gell. v. 19. 5. [6] Cic. *Dom.* 13. 34. [7] Gell. v. 19. 6. [8] Gaius i. 99.

[9] Gell. v. 19. 6; cf. the leaden tessera showing on the face a man taking another by the hand and the word ADOPTIO beneath; on the back are three officials seated, doubtless pontiffs, with the word COLLEGIUM beneath; Helbig, in *Compt. rend. d. l'acad. d. inscr. et bell.-let.* xxi (1893). 350–3. It evidently illustrates the preliminary stage of an adrogatio; see also Tac. *Hist.* i. 15.

If the pontiffs gave their consent, the case came before the comitia curiata under the presidency of the chief of the college,[1] who put the question in the following form: "Do you wish and order that L. Valerius be the son of L. Titus by the same legal rights as if born of the father and mother of that family, and that the latter have the power of life and death over the former as a father over a son? This order I request of you, Romans, to grant, just as I have pronounced the words."[2] The curiae decided by vote.[3] At the same meeting the arrogated son was required to declare that he forsook the religion of the family or gens of his birth — detestatio sacrorum[4] — and by a similar declaration the adrogator received him into the sacra of the new family.[5] This form of adoption could not apply to youths before they had put on the manly gown, or to wards or women; for children and women had no part in an assembly, and guardians were not allowed under any circumstances to place their wards in the power of another.[6]

A modification of adrogatio is testamentary adoption, of which the only well-known case is that of Octavius, the heir of the dictator Caesar. Octavius came before a praetor with witnesses and formally accepted the inheritance;[7] afterward he was declared adopted by a vote of the curiae.[8] As this case is nearly akin to the adrogatio, there can be no doubt that the vote was taken in the calata comitia under pontifical presidency.[9]

[1] Gell. v. 19. 5 f.: "Adrogationes non temere neque inexplorata committuntur; nam comitia arbitris pontificibus praebentur, quae curiata appellantur"; Tac. *Hist.* i. 15: "Si te privatus lege curiata apud pontifices, ut moris est, adoptarem." Rubino, *Röm. Verf.* 253, supposes that these comitia were under a civil magistrate; but the expressions "arbitris pontificibus" and "apud pontifices" prove pontifical management. Caesar, who passed the curiate law for the arrogation of Clodius, was supreme pontiff as well as consul.

[2] Gell. v. 19. 9.

[3] Gell. v. 19. 8; Tac. *Hist.* i. 15; Cic. *Dom.* 15. 39; *Att.* ii. 12. 2; Dio Cass. xxxvii. 51. 1 f. Mommsen, *Röm. Forsch.* i. 126, 270, supposed that the curiae simply witnessed the transaction, without giving their vote; but afterward (*Röm. Staatsr.* iii. 38) he changed his mind.

[4] Gell. xv. 27. 3.

[5] This seems to be the meaning of Serv. *in Aen.* ii. 156: "Consuetudo apud antiquos fuit, ut qui in familiam vel gentem transiret, prius se abdicaret ab ea in qua fuerat et sic ab alia acciperetur."

[6] Gell. v. 19. 8, 10.

[7] Appian, *B. C.* iii. 14. 49.

[8] Ibid. iii. 94. 389; Dio Cass. xlv. 5. 3.

[9] On the testamentary adoption, see further Leonhard, in Pauly-Wissowa, *Real-Encycl.* i. 420 f.

Distinct from the adrogatio, though analogous to it, was the direct passing of individuals and of gentes from the patrician to the plebeian rank — transitio ad plebem. The motive was a desire to qualify for the tribunate of the plebs,[1] or more generally to widen the range of one's eligibility to office.[2] The history of the republic affords several instances of the transition of individuals;[3] and two plebeian gentes, the Octavia[4] and the Minucia,[5] boasted of having passed over from the patricians. Even if these boasts rest upon genealogical falsifications,[6] the Romans thought such an act legally possible; and they formulated a process applicable to every case whether of individuals or of gentes. It was through some other ceremony than the adrogatio, for the latter could not apply to groups of persons. Clodius was following the more general procedure here referred to when in the year 60 he tried to make himself a plebeian without recourse to adrogatio. First he abdicated his nobility by an oath, probably taken in the comitia calata;[7] then coming before an assembly of the plebs, he held himself ready to receive plebeian rights through a resolution introduced by the tribune Herennius.[8] The process allowed the retention of the name, sacra, and all other privileges not dependent on the patriciate.[9]

[1] Zon. vii. 15. 9. [2] Cic. *Dom.* 14. 37; *Scaur.* 33; Ascon. 25.

[3] Mommsen, *Röm. Forsch.* i. 123 ff., has collected the cases.

[4] Suet. *Aug.* 2. [5] Livy iv. 16. 3. [6] Cic. *Brut.* 16. 62.

[7] Dio Cass. xxxvii. 51. 1: Τήν τε εὐγένειαν ἐξωμόσατο. The similarity of this oath to the detestatio sacrorum warrants the conclusion that it, too, was taken in the calata comitia. The abjuration of one's rank, however, was not a detestatio sacrorum, for the reason given in n. 8 below.

[8] Dio Cass. xxxvii. 51. 1: Καὶ πρὸς τὰ τοῦ πλήθους δικαιώματα, ἐς αὐτὸν σφων τὸν σύλλογον ἐσελθών, μετέστη; Cic. *Att.* i. 18. 4: "C. Herennius . . . tribunus pl. . . . ad plebem P. Clodium traducit." Cicero's following statement ("Idemque fert, ut universus populus in campo Martio suffragium de re Clodi ferat") signifies that Herennius was proposing to bring the question not before the centuries, as Drumann-Gröbe, *Gesch. Roms*, ii. 188, n. 3, imagines, for a tribune had no means of doing so, but before the thirty-five tribes, who were the universus populus (Cic. *Leg. Agr.* ii. 7. 16 f.) in contrast with the curiate comitia represented by thirty lictors; cf. p. 129 f.

[9] The falsification of pedigrees by plebeian families to prove descent from patrician ancestors of the same name is sufficient evidence that the name was retained through the transition; cf. Lange, *Kleine Schriften*, ii. 7 f. Were not the sacra retained, the transition of an entire gens would mean the destruction of its old religion and the creation of a new one — which is impossible. For this reason it appears that the detestatio sacrorum did not apply to such cases of transition.

But Metellus, the consul, objected that a curiate law was needed to make the act valid, and the senate evidently agreed with him.[1] Metellus may have had in mind the transition through the adrogatio, which required a curiate law, or more probably he was thinking of a vote of the curiae in addition to the other formalities which Clodius was passing through.[2] The complete process accordingly would have been the abjuration of the patriciate, confirmed by a curiate law, and the reception of plebeian rights through a plebi scitum. Clodius was not so foolish as to suppose that a process of transitio invented by himself would prove acceptable to the senate and magistrates, and must therefore have followed as closely as possible the formula which he believed to be legal. But when Metellus raised the objection, and when the tribunes persisted in interceding against the plebi scitum,[3] he yielded for the present, and in the following year had himself arrogated by a plebeian named Fonteius, from whom he was forthwith emancipated.[4] This procedure, too, allowed him to retain the gentile name of his birth,[5] his imagines and sacra,[6] and consequently his inheritance. The oath taken in the calata comitia accordingly was not the detestatio sacrorum usual in arrogations, but a form of declaration which reserved these privileges, with the understanding that in this case the arrogatio was not for the customary object but to enable him to change his rank.[7]

[1] Lange, ibid. ii. 19.

[2] The fact that he promulgated a bill of the same tenor as that of Herennius, even if it was merely for the sake of appearance, as Cicero, *Att.* i. 18. 5, alleges, favors the latter view.

[3] Cic. *Att.* i. 19. 5.

[4] Dio Cass. xxxvii. 51. 2; xxxviii. 12. 1 f.; Cic. *Dom.* 13. 35; 29. 77.

[5] Cic. *Dom.* 14. 37: "Nam adoptatum emancipari statim, ne sit eius filius qui adoptarit"; 13. 35: "Tu (Clodi) neque Fonteius es, qui esse debebas, neque patris heres neque amissis sacris paternis in haec adoptiva venisti." In *Har. Resp.* 27. 57 ("Iste parentum nomen, sacra, memoriam, gentem Fonteiano nomine obruit") Cicero does not say that Clodius assumed the gentile name of Fonteius, but rather that he used this name as a means of destroying the name, sacra, etc. of his parents; and in fact he continued to be called Clodius; cf. Dio Cass. xxxix. 23. 2 (official use). He claimed still to belong to the Clodian gens rather than to the Fonteian (Cic. *Dom.* 44. 116), whereas Cicero, looking upon the emancipation as a sham, insists that he was a Fonteian.

[6] That he retained the Claudian imagines is implied in Cic. *Mil.* 13. 33; 32. 86. He must therefore have kept the rest of the sacra.

[7] Lange, *Kleine Schriften*, ii. 23 ff. Cicero aims to bring the greatest possible confusion into the case by representing Clodius as having given up his native religion

Analogous to the transitio ad plebem is the elevation of a plebeian to the patrician rank. The Romans believed that eminent plebeians, including foreigners of distinction newly admitted to citizenship, were sometimes granted the patriciate not only through the regal period but also in the opening years of the republic. For the republican age they represented the bestowal as a double act, a resolution of the people followed by coöptation into the senate.[1] In stating that the first consuls chose the best men from the commons, made them patricians, and with them filled the senate to the number of three hundred, Dionysius[2] apparently has in mind the consuls' function of recruiting the senate before the Ovinian legislation,[3] together with their initiative in granting the patriciate. The Roman view that the bestowal required a vote of the people is further proved by the procedure of Julius Caesar and of Octavianus in creating new patricians; for in this function they doubtless followed tradition as nearly as possible. In 45 a plebi scitum,[4] proposed by L. Cassius Longinus and supported by a senatus consultum,[5] empowered Caesar to recruit the patrician rank. Octavianus proceeded in a similar manner except that a consular law,[6] approved also by a senatus consultum,[7] was passed for the purpose. As the object was religious, we may suppose that the qualifications of the candidates were previously examined by the pontifical college. On the analogy of the transitio

without receiving that of Fonteius, as being a gentilis of the Claudii though he had left the Claudian gens, etc.; *Dom.* 13. 35; 49. 127.

[1] This double act is most clearly stated by Livy iv. 4. 7: "Nobilitatem istam vestram . . . non genere nec sanguine sed per cooptationem in patres habetis . . . post reges exactos iussu populi"; p. 17, n. 5; cf. Dion. Hal. v. 40. 5: Ἡ βουλὴ καὶ ὁ δῆμος εἵς τε τοὺς πατρικίους αὐτὸν (Appius Claudius) ἐνέγραψε. This passage shows that Dionysius regards the process as an act of the people and of the senate, though he does not speak of the latter as coöptation. In the case of Appius Claudius Livy, ii. 16. 5, says simply that he was enrolled among the patres ("inter patres lectus"), and in like manner Suetonius, *Tib.* i, states that the patrician gens Claudia was coöpted into the class of patrician gentes. [2] V. 13. 2. [3] Fest. 246. 23.

[4] This measure is called the lex Cassia; Tac. *Ann.* xi. 25; p. 456 below. There can be no doubt that the author was L. Cassius Longinus, a faithful friend of the dictator, who entered upon his tribunate Dec. 10, 45; Drumann-Gröbe, *Gesch. Roms*, ii. 128 f.; iii. 602. [5] Dio Cass. xliii. 47. 3; xlv. 2. 7; Suet. *Caes.* 41.

[6] The lex Saenia; Tac. *Ann.* xi. 25.

[7] Augustus, *Mon. Ancyr.* 8; Dio Cass. lii. 42. 5.

ad plebem it may be assumed further that the candidate abjured his plebeian rank in the calata comitia, which then confirmed his declaration by vote.[1]

But whether the Romans were right in supposing patricians to have been created in the early republic has been doubted. Mommsen[2] takes the ground that when the curiae ceased to be exclusively patrician, elevation to the rank became impossible, and that therefore no cases of the kind occurred after the fall of the kings. But in such a matter it is absurd to speak of impossibilities; everything was possible which the governing power approved, and the argument falls when its basis, the purely patrician state, has been removed.[3] The cessation was in fact due to the growing exclusiveness of the patricians, who as they came to supplant the king in the government, learned to value their privileged position so highly they were unwilling longer to share it with others. Just when the closing of their rank was effected has not been ascertained, but there is no good reason for rejecting the Roman view that for a time after the fall of the kings plebeians continued to be admitted: in reality the indications are strong for a relatively late closing.[4]

We may next inquire how patricians were created in the time of the kings. As the history of the regal period is in general a reconstruction with material drawn from later time, so in this particular case ancient writers sometimes date back to the age of the kings the usage of the republic. Dionysius[5] accordingly states that "the Romans by vote transferred Servius Tullius from the plebeian to the patrician order, just as they had previously transferred Tarquin the Elder and still earlier Numa Pompilius." But the Romans preferred to reconstruct

[1] Neither the pontifical examination nor the curiate law is noticed by the authorities, who refer briefly to the two acts. Lange, *Röm. Alt.* iii. 472, and Mommsen, *Röm. Staatsr.* ii. 1101, suppose that Caesar as supreme pontiff made the adlectio, although, as Mommsen notices, Octavianus had not yet attained to that office when he attended to the same function. Both writers (cf. Lange, ibid. i. 412) understand the curiate assembly to have been a factor in the process. On these late adlectiones, see also Herzog, *Röm. Staatsverf.* ii. 38 f., 130; Drumann-Gröbe, *Gesch. Roms*, iii. 602; Büdinger, in *Denkschr. d. kaiserl. Akad. d. Wiss. Phil.-hist. Cl.* xxxi (1881). 211–73; xxxvi (1888). 81–125.

[2] *Röm. Staatsr.* iii. 32.

[3] Ch. ii above; also p. 166, n. 3 below.

[4] Botsford, in *Pol. Sci. Quart.* xxii (1907). 689–92.

[5] IV. 3. 4.

the process on an entirely different principle. Regarding the kings as the founders of all the fundamental institutions, the patricians looked upon their superior rank as a gift of these monarchs. The patriciate depended upon senatorial membership, which was at the disposal of the kings.[1] This view is well adapted to explain the creation of the senate; but for the period after its establishment Livy [2] adds to the adlectio of the king a coöptatio by the patres (senators). Livy's account of the usage here given is reasonable; the king indicated his preference as to the choice of advisers, but a powerful council, such as the senate must have been, at least in the later regal period, would have the final decision on the question of admitting a new member. The conclusion is that toward the end of the monarchy, if not from the beginning, plebeians were admitted to the senate, and through it to the patriciate, by the coöperation of the king and the senate, the people having nothing to do with the matter.[3] But after the overthrow of the monarchy the vote of the people was substituted for the will of the king, coöptation by the senate continuing as before.[4]

The patriciate was acquired not only through bestowal by the state, but also through the adoption of a plebeian into a patrician family. Several cases of the kind have been ascertained.[5] The act took place before the praetor[6] and did not concern the comitia. Probably a preliminary examination by the pontiffs was necessary to adoptions as well as to arrogations.[7]

[1] P. 17.

[2] IV. 4. 7; p. 24, n. 5, 200, n. 1; cf. Suet. *Tib.* 1: "Patricia gens Claudia . . . in patricias cooptata."

[3] Mommsen's theory (*Röm. Staatsr.* iii. 29 and n. 2) that the patriciate was conferred through the coöperation of the king and the comitia appears accordingly to rest on a weak foundation. He gives no evidence, but bases his contention on the argument (1) that the community was sovereign, (2) that — the patriciate being in his opinion equivalent to the citizenship and the comitia curiata being a group of gentes — the downfall of the comitia made the reception of gentes impossible. Ground is taken against the theory of popular sovereignty in the following chapter. Against his second point it can be urged that the original comitia were neither patrician nor "gentile"; hence there is no occasion for speaking of the downfall of such comitia or of its sweeping consequences.

[4] Livy iv. 4. 7; p. 17, n. 5, 164, n. 6.

[5] Mommsen, *Röm. Forsch.* i. 74 ff.

[6] Gell. v. 19. 1–3.

[7] Such an examination was the only means by which the patricians could protect their order from being flooded by plebeians; cf. Mommsen, ibid. i. 77, who notices

Rubino, J., *Röm. Verfassung*, 241–53; Mommsen, *Röm. Forschungen*, i. 123–7, 397–409; *Röm. Chronologie*, 241 ff.; *Röm. Staatsrecht*, ii. 33–41; iii. 38–40; Lange, L., *Röm. Altertümer*, i. 131–4, 177 f., 356 f., 362, 398–401, 459, 795; ii. 518, see also indices s. Adrogatio, Calatores, Detestatio sacrorum; *Transitio ad plebem*, in *Kleine Schriften*, ii. 1–90; Madvig, J. N., *Verf. u. Verw. d. röm. Staates*, i. 222–6; Herzog, E., *Röm. Staatsverfassung*, i. 108–11, 1062–4, 1075; Mispoulet, J. B., *Institutions politiques des Romains*, i. 202 f.; Willems, P., *Droit public Rom.* 53 f.; Drumann-Gröbe, *Gesch. Roms*, ii. 187 ff.; Wissowa, G., *Religion und Kultus der Römer*, 440 f.; Hallays, A., *Comices à Rome*, 16–9; Mercklein, D. L., *Coöptation der Römer*, 11–44 (of the gentes and of the senate); Helbig, W., in *Comptes rendus de l'acad. des inscr. et belles-lettres*, xxi (1893). 350–3; Büdinger, M., *Cicero und die Patriciat*, in *Denkschr. d. Kaiserl. Akad. d. Wiss. Phil.-hist. Cl.* xxxi (1881). 211–73; *Der Patriciat und das Fehderecht in den letzten Jahrzehnten der röm. Rep.*, ibid. xxxvi (1888). 81–125; Baudry, F., *Adrogatio*, in Daremberg et Saglio, *Dict.* i. 83 f.; Saglio, E., *Calator*, ibid. i. 814; Humbert, G., ibid. i. 1375 f.; *Detestatio sacrorum*, ibid. ii. 113; Leonhard, *Adrogatio*, in Pauly-Wissowa, *Real-Encycl.* i. 419–21; Samter, *Calatores*, ibid. iii. 1335 f.; Kübler, *Calata comitia*, ibid. iii. 1330–4; Ruggiero, E., *Diz. ep.* ii. 1185; Smith, *Dict.* i. 26 f.; Nettleship, *Contrib. to Lat. Lexicog.* 400.

that no known instance of this kind of adoption took place before the admission of plebeians to the pontifical college through the Ogulnian law, 300; p. 309 below.

CHAPTER IX.

THE COMITIA CURIATA

The primitive European assembly, of which the Roman is a variety, may be reconstructed in broad outline by a comparison of the forms and functions of the institution as found among the earliest Italians, Greeks, Celts, Germans, Slavs, and kindred peoples, among whom it differed in detail while possessing the same general features. The usual tendency of development was toward the abridgment of popular powers to the advantage of the nobles or of the king;[1] but in some instances may be discovered a growth in the opposite direction.

Generally the assembly did not have fixed times of meeting but convened only when called by the king or chiefs. This is known to be true of the Homeric Greeks,[2] of the Slavs,[3] and of the Romans,[4] and may be regarded as the more primitive condition. In addition to extraordinary sessions the German assembly acquired the right to meet regularly twice a month at fixed times[5]—a right which gave the people a valuable political advantage. In like manner the Lacedaemonians met once a month;[6] the Athenians probably once a prytany (tenth of a year) after Cleisthenes, and certainly four times a prytany after Pericles.[7] The Celtic assemblies convened annually or triennially at fixed seasons.[8] Among all these peoples, however, subjects for consideration were presented by none but the king

[1] Schrader, *Reallexikon*, 924; Spencer, *Principles of Sociology*, ii. 407.

[2] *Il.* i. 54; ii. 50; xix. 40 ff.; *Od.* ii. 6 f.

[3] Kovalevsky, *Modern Customs and Ancient Laws of Russia*, 122, 124.

[4] We must except the purely sacerdotal meetings of the curiae described in the preceding chapter.

[5] Tac. *Germ.* 11. 2; cf. Schröder, *Deutsche Rechtsgesch.* 22 f.

[6] *Rhetra* of Lycurgus, in Plut. *Lyc.* 6; cf. Gilbert, *Altspart. Gesch.* 131 f.

[7] Arist. *Ath. Pol.* 43. 4; cf. Gilbert, *Const. Antiq. of Sparta and Athens*, 285.

[8] This is true of the religious-judicial assemblies of the continental Celts (Caesar, *B. G.* vi. 13), which may also have exercised political functions, and of the Irish assemblies; Ginnell, *Brehon Laws*, 44, 51, 54; cf. Schrader, *Reallexikon*, 924.

or chief, the assembly itself being wholly without initiative. Such subjects were as a rule previously discussed in a council of chiefs or nobles.[1] The person who summoned the assembly naturally made the first speech, which explained the purpose of the meeting and the character of the subject to be considered. If it was an enterprise in which he desired the support or coöperation of the community, he attempted to rouse for it the enthusiasm of his hearers.[2] The discussion might then be continued by the chiefs or any others distinguished for age, military prowess, or eloquence.[3] Among the Germans, who possessed more than the average degree of liberty, any one spoke who could gain a hearing; in the Homeric assembly a commoner who dared lift up his voice against king or noble was liable to severe chastisement as a disorderly person;[4] and conditions at Rome, as well as in Etruria,[5] seem to have been equally unfavorable to the ordinary freeman.

A considerable variety of business came before the assembly. It might be summoned to hear the announcement of news of interest to the community,[6] the reading of the calendar for the month,[7] the declaration of a policy or opinion by a king or chief,[8] or for witnessing acts affecting the interests of the community.[9]

[1] The Celtic magistrates disclosed to the people those matters only which they determined to be expedient; and it was unlawful to speak on public affairs outside the assembly; Caesar, *B. G.* vi. 20. The German chiefs in council preconsidered every subject to be presented to the assembly; Tac. *Germ.* 11. 1; Schröder, ibid. 23. The prominence of the nobles in the Slavic assembly (Kovalevsky, ibid. 123 ff.) would lead to the same conclusion regarding them. For the Homeric age of Greece the meeting of the council previous to the assembly as described by *Il.* ii. 50 ff. is typical, although we could not expect the poet in every case to repeat the procedure with uniform minuteness. The preconsidering power of the Roman senate was of the same nature.

[2] *Il.* ii. 278 ff.

[3] Tac. *Germ.* 11. 4. As a rule the North American Indians enjoy the same freedom of speech in their councils; Farrand, *Basis of American History*, 160, 211.

[4] *Il.* ii. 211 ff.; xii. 212 f. Calchas the seer, a man of the people, gained the protection of Achilles before daring to speak against Agamemnon; *Il.* i. 76 ff.

[5] On the control of the Etruscan assembly by the nobles, see Müller-Deecke, *Etrusker*, i. 337; Hirt, *Indogermanen*, i. 55.

[6] *Od.* ii. 28 ff.

[7] P. 154 f.

[8] *Od.* ii. 35 ff.; cf. the public complaint made by a Slavic chief of an injury he had received; Kovalevsky, ibid. 121.

[9] Such as the reception of the youth into the warrior class among the Germans; Tac. *Germ.* 13. 2; for the witnessing assembly at Rome, see p. 155 f.

More important were judicial cases,[1] questions of war and peace,[2] and elections.[3]

The problem as to the relative power of the king and council on the one hand and of the assembly on the other is difficult. It was a disadvantage to the people, over and above their lack of initiative, to have no means of precisely expressing their will. The Greeks signified their approval by acclamation,[4] the Germans by clashing their weapons,[5] and the Celts by both;[6] either demonstration aimed to express, not the will of the majority,[7] but the intensity of conviction on the part of the assembly as a whole. It lacked as well the means of legally enforcing its will.[8] The Achaeans in assembly approved the petition of

[1] Schrader, *Reallexikon*, 659, 662, 688. For the Celts; Caesar, *B. G.* vi. 13; cf. i. 4 (trial of Orgetorix). For the Germans; Tac. *Germ.* 12. 1 f. For the Slavs; Kovalevsky, *Mod. Cust. and Anc. Laws*, 126. The famous trial scene in the Homeric assembly; *Il.* xviii. 497 ff. For the Macedonians; Curt. vi. 8. 25. It is probably true of Vedic India; Schrader, ibid. 688.

[2] For the Germans; Brunner, *Deutsche Rechtsgesch.* i. 129. For the Slavs; Kovalevsky, ibid. 128, 130, 141 f. For the Celts; Polyb. iii. 44. 5 f.; Caes. *B. G.* v. 27, 36; Livy xxi. 20. 3; Tac. *Hist.* iv. 67. The Helvetian assembly probably decided the question of migration; Caesar, *B. G.* i. 2. As to the Greeks, Agamemnon proposed to the assembly to quit the war and return home, the people gladly accepted; *Il.* ii. 86 ff. A proposal of peace came from the Trojans to the Achaean assembly; the people rejected it on the advice of Diomede, and Agamemnon concurred in their opinion; *Il.* vii. 382 ff.

[3] The German mode of electing a king or war-leader is well known; cf. Brunner, ibid. i. 129. The assembly also elected the chiefs of the pagi (Gaue) and of the villages; Tac. *Germ.* 12. 3. The Celts who were not ruled by hereditary kings elected their chiefs annually (Caesar, *B. G.* i. 16) or for a migration; ibid. 3. The Irish kings were generally elected from particular families; Ginnell, *Brehon Laws*, 66. The Slavs elected their king and other officials; Kovalevsky, ibid. 124 f., 127, 129, 138 f. In Homeric Greece the kingship was generally hereditary, but the people might elect a war-leader to take command by the side of the king; *Od.* xiv. 237; cf. xiii. 266. There are traces of elective kingship, lasting at least a few generations, in the great majority of early European states; Jenks, *History of Politics*, 87; cf. 35 f.

[4] *Il.* i. 22 ff. For the Lacedaemonians, see Thuc. i. 87.

[5] Tac. *Germ.* 11. 5; *Hist.* v. 17. Sometimes the Germans mingled clamor with the clash of weapons; Amm. Marc. xvi. 12. 13.

[6] Caesar, *B. G.* vii. 21.

[7] Majority rule was unknown to primitive times. The members of the council talked together till they came to a unanimous agreement. If the Homeric Greeks in assembly failed to agree, each party went its own way; *Od.* iii. 150 ff. Among the Slavs the majority forced a unanimous vote by coercing the minority; Kovalevsky, ibid. 122 ff. For the Germans; Seeck, *Gesch. d. Unterg. d. antik. Welt*, i. 213.

[8] For the Homeric Greek assembly, see Hermann-Thumser, *Griech Staatsalt.* 67 f.

Chryses, a suppliant priest; nevertheless King Agamemnon rejected it.[1] After the people had divided the spoils of war, Agamemnon seized the prize they had given another.[2] The Trojans were ready to surrender Helen for the sake of peace; but Priam, to gratify his son, refused, and the war went on.[3] In his relations with individuals the king often acted unjustly and tyrannically. Even in affairs which concerned the entire community he might take large liberty. Without consulting the assembly he could count on the support of the people in a war of defence. Treaties of peace, which were often guest-friendships and intermarriages between royal families,[4] did not come before the people for ratification as a right, but only in cases in which their pledge seemed necessary for the prevention of private warfare. The right of the magistrate to conclude peace with or without discussion in the council or senate was recognized by the states of Italy as late as the Second Samnite war.[5] The king might even declare an offensive war on his own responsibility, if without consulting the people he could feel sure of their support.[6] Enterprises requiring their coöperation he usually submitted to them to win their approval, as he had no means of coercing the entire community. His independence of the assembly increased with the growth of heredity. The idea of sovereignty, strictly speaking, was unknown to primitive times;

[1] *Il.* i. 11 ff.

[2] Ibid. i. 135 ff., 320 ff.

[3] Ibid. vii. 345 ff.

[4] In Italy, Livy i. 45. 2; 49. 8.

[5] This right is proved by the fact that the death of a king freed the neighboring states from their treaty obligations to his community, *e.g.*, the Fidenates after the death of Romulus; Dion. Hal. iii. 23. 1; the Latins after the death of Tullus; Dion. Hal. iii. 37. 3; various neighbors after the expulsion of the last Tarquin; Dion. Hal. viii. 64. 2; cf. Rubino, *Röm. Verf.* 175, n. 2. At the time of the Caudine disaster (321 B.C.) the Samnite leader assumed that the Roman consuls were competent in their own right to conclude a definitive peace; Livy ix. 2 ff.

[6] Among the Quadi the right to declare war belonged to the council, not to the assembly; Amm. Marc. xxx. 6. 2. With the Saxons the will of the nobles was equivalent to the will of the people; Beowulf, cited by Seeck, ibid. i. 217. 7, see also his notes on p. 531. The Sabine senators (senes) are represented as responsible for the continual wars of their people with the Romans; Livy ii. 18. 11. In general the leading men and the senate were able by their own oath to bind the community; Caes. *B.G.* iv. 11; cf. 13. A chief might work his will by packing an assembly with men on whom he could rely; Tac. *Hist.* iv. 14. The Grand Duke of Russia, relying on his comitatus, sometimes went to war without consulting the people; Kovalevsky, *Mod. Cust. and Anc. Laws*, 142.

yet so far as people thought of political power, they assigned it to the king and council.[1] Nevertheless the fact of the assembly's existence and the need of eloquence for persuading it prove it to have been a real force. The suppression of the German assembly or the prohibition of carrying arms to the meeting was looked upon as intolerable tyranny.[2] For the disturbance of an Irish assembly the penalty was death.[3] Public opinion was a check on royalty,[4] and in extreme cases the people rebelled and killed their king.[5]

The strengthening of the kingship naturally tended to weaken the assembly. The Lacedaemonian kings had a right to make war on whatever state they pleased, and any citizen who obstructed this power was accursed;[6] if, too, in anything the people gave a wrong decision, the kings and council could set it right.[7] Under the Frankish monarchy the general assembly seems to have entirely disappeared in the sixth century A.D., to be revived in the latter part of the seventh,[8] in a form which took little account of the commons.[9] In the other Germanic tribes which entered the Empire the effect of the migration was to strengthen the king and to weaken in a corresponding degree the power of the people.[10] In Russia Tartar domination, converting the legitimate princes into tyrants, effected the downfall of

[1] Leist, *Graeco-ital. Rechtsgesch.* 130, 136 f. Under favorable conditions the assembly acquired sovereignty, as at Athens and for a time in Russia; Kovalevsky, *Russian Political Institutions*, 17. Schrader, *Reallexikon*, 923 f., following Mommsen (cf. also Post, *Grundlagen des Rechts*, 130; Cramer, *Verfassungsgesch. d. Germ. u. Kelt.* 61 et pass.), is altogether wrong in supposing the assembly to have been originally sovereign.

[2] Tac. *Hist.* iv. 64. Charlemagne suppressed the assemblies of the Saxons except for receiving communications from his missi and for the administration of justice; *Cap. de Part. Sax.* i. 70. 34 (Boretius 26. p. 68).

[3] Ginnell, *Brehon Laws*, 42.

[4] *Od.* iii. 214 f.; xiv. 239; xvi. 75, 95 f., 114; xix. 527.

[5] In Homeric Greece; *Il.* i. 231 f.; iii. 57. The Herulians killed their king merely because they were weary of royal government; Procopius, *Bel. Goth.* ii. 14, p. 422 A. Sometimes the Celtic commons massacred both magistrates and council, and took affairs into their own hands; Polyb. ii. 21; Caesar, *B. G.* iii. 17.

[6] Hdt. vi. 56.

[7] *Rhetra* of Polydorus and Theopompus, in Plut. *Lyc.* 6. This power is essentially the same as the auctoritas of the Roman patres.

[8] Fustel de Coulanges, *Monarchie Franque*, 598 ff.

[9] Ibid. 638 ff.

[10] Hodgkin, *Italy and her Invaders*, iii. 239 ff.

the assemblies.[1] The building up of large states, too, necessarily degrades or destroys popular gatherings.[2]

The heritage of the Roman assembly from the earlier tribal time must have been slight as well as vague — a heritage diminished further by the growing power of the king and nobles. The assumption has often been made that from the beginning the Roman assembly was sovereign. The view rests in part, however, on a confusion of two ideas which should be kept distinct. In its broadest sense populus designates the state, which is sovereign whether it expresses its will through the king, the senate, or the popular assembly, or through the concurrence of two or more of these elements. In interstate relations it always has this meaning. More narrowly populus signifies the masses of citizens in contrast with the magistrates or with the senate.[3] In the latter sense it cannot be said that the populus was from the beginning sovereign. The Romans themselves of later time understood that in the regal period the senate had the wisdom to advise, the king possessed the imperium, whereas the people enjoyed but a limited degree of freedom, right, and power.[4] Their condition was not liberty but a preparation for it.[5] Their assembly, like that of other early Europeans, had no power of initiative; it met only when summoned by the king, and could consider those matters only which the king brought before it. Its object must have been chiefly to receive information and to witness acts of public importance. In no case did the king call upon the assembly for advice; counsel belonged exclusively to the wise elders, who composed the senate;[6] and should he wish to instruct the people in the merits of a proposed measure, he would himself address them and perhaps invite the most respected senators or his most trustworthy supporters among the private citizens to give the masses the benefit of their wisdom.[7] In other than judicial

[1] Kovalevsky, *Mod. Cust. and Anc. Laws*, 148.

[2] The rest of this chapter is largely a reproduction of Botsford, *Lex Curiata*, in *Pol. Sci. Quart.* xxiii (1908). 498–517.

[3] P. 2, 176.

[4] Cic. *Rep.* 28. 50; cf. 23. 43.

[5] Livy i. 46. 3; 60. 3; ii. 1. 6 f.; 15. 3.

[6] Cic. *Planc.* 4. 9: "Non est consilium in vulgo."

[7] Cf. Livy i. 34. 12.

assemblies the privilege of speaking must have been sparingly granted.[1] Finally no elective or legislative act of the curiae was valid without the authorization of the senate (patrum auctoritas).[2]

With reference to the specific rights of the assembly, Dionysius[3] states that Romulus granted the commons three prerogatives, (1) to elect magistrates, (2) to ratify laws, (3) to decide concerning war, whenever the king should refer the matter to them. Livy's[4] stricture on the absolutism of Tarquin the Proud implies, too, that constitutionally the assembly should have had power to decide on peace and war. But stress should be laid on the admission of Dionysius that probably all the questions above enumerated, or at least those of peace and war, were referred to the assembly at the pleasure only of the king — that the decision of them was not a right of the people, but a concession on the part of the sovereign.[5] Still more important, these generalizations are in great part invalidated, as Rubino[6] has shown, by the testimony of their authors. When either refers to individual cases of treaty-making under the kings, he never connects the assembly with the proceedings.[7] It is significant, too, that the formula of treaty makes the king the only actor, taking no account of the people.[8] Usually peace continued merely through the lifetime of the king who contracted it,[9] but a truce for a definite period was binding to the end, even after his death.[10] Under the republic to the time of the decemvirs the treaty-making power resided in the consuls

[1] P. 145. [2] P. 235.

[3] II. 14. 3: Τῷ δὲ δημοτικῷ πλήθει τρία ταῦτα ἐπέτρεψεν· ἀρχαιρεσιάζειν τε καὶ νόμους ἐπικυροῦν καὶ περὶ πολέμου διαγιγνώσκειν, ὅταν ὁ βασιλεὺς ἔφη.

[4] I. 49. 7.

[5] This interpretation, offered by Rubino, is accepted by Lange, *Röm. Alt.* ii. 599.

[6] *Röm. Verf.* 257 ff.

[7] The treaty with the Sabines rested on the oaths of the two kings alone; Livy i. 13. 4; Dion. Hal. ii. 46. 3; Plut. *Rom.* 19. Romulus of his own authority made a hundred years' truce with Veii; Dion. Hal. ii. 55. 5 f. With the advice of the senate he solicited alliances with the neighboring states; Livy i. 9. 2. Numa personally contracted alliances with the surrounding states; Livy i. 19. 4. Tullus Hostilius made a treaty with the Sabines, the indemnity being fixed by a senatus consultum; Dion. Hal. iii. 32. 6. For other citations, see Rubino, ibid. 264, n. 3.

[8] Livy i. 24. 4 ff. [9] P. 171, n. 5 above.

[10] Livy i. 30. 7.

and senate.[1] Ordinarily either a senatus consultum empowered the magistrates to use their discretion [2] or sanctioned the agreement when made.[3] More rarely the senate treated directly with ambassadors from the enemy.[4] The clamor of the plebeians sometimes prevailed upon the senate to negotiate for peace;[5] and at other times it was merely by accident that the people heard of the conclusion of a treaty.[6] After the decemviral legislation the plebeian assembly of tribes slowly acquired the right of ratification;[7] in fact it was not till the Second Samnite war that their vote came to be essential.[8] Among the archives devoted to treaties and alliances, accordingly, senatus consulta and plebiscites alone are mentioned.[9] The very fact that in the later republic the ratification of treaties belonged exclusively to the tribal assembly [10] proves that it was an acquired right of the people; for we may set it down as a fixed principle that the curiae and the centuries yielded none of their prerogatives to the tribes.[11]

As regards the right of the people to declare war a distinction must be drawn between defensive wars, which, admitting neither choice nor delay,[12] could not be referred to their decision, and aggressive wars, which were in the option of the state to undertake or avoid. Yet even in the case of offensive wars, though the approval of the people was doubtless often sought, they exercised under the kings and in the early republic no real right. When the king or magistrate felt that Rome had suffered injury from a neighboring state, he despatched an ambassador to seek reparation. If the demand was not complied with, the ambas-

[1] Cf. Livy ii. 22. 5. In 495 the consul, in pursuance of a senatus consultum, made peace with the Volscians at their request; Livy ii. 25. 6. In the same form Cassius the consul in 493 made peace with the Latins (Livy ii. 33. 4; Dion. Hal. vi. 18–21, especially 21. 2) and in 486 with the Hernicans; Dion. Hal. viii. 68. 4; 69. 2; Livy ii. 41; cf. Rubino, ibid. 266 f.

[2] Cf. Dion. Hal. ix. 17. 2; 59. 4.

[3] Livy iii. 1. 8.

[4] Dion. Hal. ix. 36. 2 f.; x. 21. 8.

[5] Livy ii. 39. 9 f.

[6] Cf. Dion. Hal. ix. 17. 2, 4.

[7] P. 351; cf. Rubino, *Röm. Verf.* 269 ff.

[8] On the epoch-making rejection of the Caudine treaty of 321, see p. 171, n. 5. 376.

[9] Suet. *Vesp.* 8; Rubino, ibid. 261.

[10] Cf. Rubino, ibid. 260.

[11] Ibid. 263.

[12] Cf. i. 14. 6; 36. 1. Too much stress should not be laid on this distinction, however, as the Romans always regarded their enemy as the aggressor, and assumed that every war was undertaken for the redress of grievances.

sador, calling Jupiter and the other gods to witness the injustice, added: "But we shall consult the elders in our own country concerning these matters, to determine in what way we may obtain justice." When the messenger had returned to Rome and had made his report, the king consulted the senate substantially in these words: "Concerning such matters, differences, and disagreements as the pater patratus of the Roman people, the quirites, has conferred with the pater patratus of the ancient Latins and of the ancient Latin peoples — which matters ought to be given up, performed, discharged, but which they have neither given up nor performed nor discharged — declare," said he to the senator whose opinion he wished first to obtain, "what you think." Then the elder thus questioned replied, "I think the demand should be enforced by a just and pious war; and therefore I consent to it and vote for it." Then the rest were asked in order, and when a majority agreed in this opinion, war was thereby voted.[1] In all this account there is no mention of the people; but afterward when the fetialis reached the border of the enemy's country, and pronounced the formula for the declaration of war, he included a statement that the populus Romanus had ordered it: "Forasmuch as the populus Romanus of the quirites have ordered that there should be war with the ancient Latins, and the senate of the populus Romanus of the quirites have given their opinion, consented, etc., I and the populus Romanus declare and make war on the peoples of the ancient Latins."[2] In this connection, as in all formulae applying to international relations, populus means not the assembly but the state; hence the use of the word cannot be taken as evidence of the existence of a popular right to declare war.[3] Besides this formula we have in support of such a right the general statement only of Dionysius and the implied idea of Livy, referred to above,[4] neither of which is in itself of especial weight. On the other hand the individual kings seem to have been free to make war at their discretion. The fact that peace

[1] Livy i. 32. [2] Ibid. i. 32.

[3] P. 1 f., 173. The formula is extremely ancient in origin, but it must have undergone modifications in time, as is indicated by the word prisci applied to the Latins. Possibly the reference to the populus should be similarly explained.

[4] P. 174.

and war are represented as depending upon the character and inclinations of the king[1] further establishes the real view of the Roman historians. In a succeeding chapter[2] it will be made clear that not till 427 did the centuriate assembly acquire the right to declare an aggressive war; probably not till some time afterward was this right established as inalienable. Previous to that date the warriors, perhaps in a contio, were occasionally called on to give their approval, doubtless, as has been explained above,[3] to increase their enthusiasm for the war.

With reference to the legislative activity of the assembly under the kings, it is necessary to call attention to the fact that among all peoples in the earlier stages of their growth law is chiefly customary.[4] At the time of her founding Rome inherited from the Latin stock, to which her people mainly belonged, a mass of private and public customs, which, owing their existence to no legislative power, were the result of gradual evolution. Under such conditions, as in Homeric Greece, the king or chief settled disputes in accordance with these usages, though in the general belief his individual judgments came directly to him from some god. The Homeric king received his dooms — θέμιστες — and even his thoughts from the gods.[5] The mythical or semi-mythical legislators of Greece, as Minos, Lycurgus, and Zaleucus, were given their laws by revelation. In like manner Numa, who may be considered a typical legislator for primitive Rome,[6] received his sacred laws and institutions from the goddess Egeria;[7] and Romulus, the first great law-giver,[8] was a demi-god, who passed without dying to the dwelling-place of the immortals.[9] Roughly distinguished, Romulus was the author of the secular law, Numa of the sacred.[10] In general the Romans

[1] Cf. Livy i. 22; 30. 3; 35. 7; 38. 4. [2] P. 230. [3] P. 171.

[4] For the Indo-Europeans, see Schrader, *Reallexikon*, 655 ff.; Maine, *Ancient Law*, xv f., 2 ff.; Hirt, *Indogermanen*, ii. 522 ff. There may have been occasional legislation by the assembly in its earliest history; cf. the prohibition of the importation of wine by the Suevi (Caesar, *B. G.* iv. 2), which may have been an act of the kind.

[5] *Il.* i. 238; ix. 98; *Od.* vi. 12.

[6] Cic. *Rep.* v. 2. 3; Livy i. 19. 1. [7] Livy i. 19. 5; cf. 42. 4; Tac. *Ann.* iii. 26.

[8] Livy i. 8. 1; Verg. *Aen.* i. 292 f. [9] Cic. *Rep.* ii. 10. 17; Livy i. 16.

[10] On the legislation of the kings, see Voigt, in *Abhdl. d. sächs. Gesellsch. d. Wiss.* vii (1879). 555 ff.

of later time looked back to their kings, the founders of their state,[1] as the authors not only of their fundamental laws and institutions but even of their moral principles.[2] Doubtless the Roman view of the ancient king is an image of the republican dictatorship, of the extraordinary magistratus rei publicae constituendae, of the consul freed from his various limitations;[3] but the picture, stripped of the distinctness which came with the gradual formulation of constitutional usage, is, as comparative study shows, true to the primitive condition which it aims to represent.

From this early conception the idea of human legislation gradually emerged. Not daring on his own responsibility to change a traditional usage which the people held sacred, the magistrate found it expedient to obtain their consent to any serious departure,[4] with a view not to legalizing the proposal, but to pledging the people to its practical adoption. When and how the primitive acclamation gave way to the orderly vote of the comitia curiata cannot be ascertained from the sources.[5] After this stage was reached, the transaction between king and people had the following form: "I ask you, quirites, whether you will consent to, and consider it right, that T. Valerius be a son to L. Titus as rightfully and legally as if born of the father and mother of the family of the latter, and that the latter have the power of life and death over the former as a father over his son. These (questions) in the form in which I have pronounced them, thus, quirites, I ask you."[6] The magistrate brought his formulated request before the people (legem ferre), who accepted it (legem accipere); the question (rogatio) was directed not to the assembly as a whole but to the component citizens, who individually

[1] Livy ii. 1. 1.

[2] Cf. Cic. *Rep.* i. 2. 2. To the end of the republic resort was had in national crises to the numen deorum as the ultimate source of law; Cic. *Phil.* xi. 12. 28.

[3] Mommsen, *Röm. Staatsr.* ii. 11.

[4] Mommsen, ibid. iii. 313; cf. Jenks, *History of Politics*, 89 f.

[5] In the preceding chapter (p. 153, 157) an attempt is made to determine under what influence the curiate organization and the systematic vote were introduced into the assembly.

[6] Cf. Gell. v. 19. 9: "Velitis, iubeatis, uti. . . . Haec ita, uti dixi, ita vos, quirites, rogo." This reference to an arrogation is quoted here merely for the sake of the formula. For further citations, see Mommsen, ibid. iii. 312, n. 2.

replied ut rogas, "yes," or antiquo, "no."[1] By this procedure the citizens bound themselves to the acceptance of the proposition on an oral promise, which was the strongest form of obligation known to them. Herein is involved the fundamental idea of lex, which was not a command addressed by the sovereign to the people or a contract between ruler and ruled, but an obligation which the citizens took upon themselves at the request of the magistrate.[2] The verb iubere, which designates the people's part (populus iubet) in the passing of laws and resolutions, did not originally have the meaning "to order," which belonged to it in the age of Cicero. Some have derived it from ius habere, "to regard as right;"[3] others from judh, an extension of the root ju, "to bind."[4] In either case it seems to mean no more than to accept or hold as right or as binding. In its widest sense lex denotes any obligation which one party takes upon himself on the offer of another. In this meaning it may apply to a business contract,[5] in which alone the obligations are reciprocal, to the instruction imposed by a superior magistrate upon an inferior,[6] to the auspicium which the magistrate formulates and the god accepts,[7] to the ordinance which the subject, without being consulted, receives willingly or unwillingly from the ruler

[1] For ut rogas, see Livy vi. 38. 5; x. 8. 12. Antiquo for "no" may be inferred from the use of antiquare to designate the rejection of a proposal; e.g. Livy iv. 58. 14; cf. Herzog, *Röm. Staatsverf.* i. 1108, n. 4; p. 467 below.

[2] Lex may be related to lēgare, ligare, "to bind"; Brugmann, *Gundriss*, I. i. 134; Corssen, *Aussprache*, i. 444; Herzog, *Röm. Staatsverf.* i. 112, n. 1; Lange, *Röm. Alt.* i. 315 ("bindende Vorschrift"). Mommsen, *Röm. Staatsr.* iii. 308, n. 4, quotes J. Schmidt for the fundamental meaning of the root leg, "to place in order," connecting it with English "law" (cf. θεσμός, Gesetz); cf. Kretschmer, *Einleitung in die Geschichte der griech. Sprache*, 165; Schrader, *Reallexikon*, 657; Christ, in *Sitzb d. bayer. Akad d. Wiss.* 1906. 215.

[3] Cf. Corssen, *Aussprache*, i. 684.

[4] Cf. Vaníček, *Etym. Wörterb.* 227; Herzog, ibid. i. 116, n. 3 (Rechtsetzen). Schrader, *Reallexikon*, 657, connecting ius with Avest. yaoš, "pure," develops its meaning through (1) oath of purification in legal procedure, (2) legal procedure, finally (3) human law, right, as distinguished from fas; cf. Christ, in *Sitzb. d. bayer. Akad. d. Wiss.* 1906. 212 (ius = Skt. yōs). On the meaning, see further Nettleship, *Contributions to Latin Lexicography*, 497; Clark, *Practical Jurisprudence*, 16–20.

[5] For the leges censoriae, see Mommsen, *Röm. Staatsr.* ii. 430.

[6] Livy i. 26. 7: "Hac lege duumviri creati."

[7] On the legum dictio, see Serv. *in Aen.* iii. 89.

(lex data),[1] as well as to the statute established by the question of the magistrate and the affirmative answer of the citizens (lex rogata). The leges of the community, with which alone the present discussion is concerned, were distinguished as publicae.[2] A lex of the kind was not necessarily general,[3] but applied as readily to an individual citizen[4] as to the entire body, to a declaration of war,[5] or the banishment of a citizen,[6] as well as to a universal rule of conduct. In the earlier time the lex rogata, or simply lex, seems to have designated any act of an assembly, elective or judicial as well as law-making in the modern sense.[7] But in the time of Cicero it had come to mean any act of an assembly which was neither an election nor a judicial decision,[8] and in the latter sense the word is used in this volume.

The acceptance of a proposition by the citizens obligated themselves[9] but not the government. The king, who retained office for life and was irresponsible, could not be held amenable to law; against a tyrannical ruler the only resource was revolution. Although the republican magistrates possessed remarkably

[1] Examples of leges datae are the ordinances of the kings or of extraordinary constitutive magistracies, as the triumviri rei publicae constituendae, municipal laws and provincial regulations established by Rome; cf. Mommsen, *Röm. Staatsr.* iii. 311 and notes.

[2] Law of the XII Tables, cited by Gaius, in *Dig.* xlvii. 22. 4: "Dum ne quid ex publica lege corrumpant"; Cato, *Orig.* iv. 13: "Duo exules lege publica (condemnati) et execrati"; Gaius ii. 104; *CIL.* vi. 9404, 10235; cf. Mommsen, *Röm. Staatsr.* iii. 310, n. 3; Lange, *Röm. Alt.* ii. 598 f.

[3] Ateius Capito's definition in Gell. x. 20. 2 ("Lex est generale iussum populi aut plebis rogante magistratu") fails to cover all cases, as Gellius immediately shows.

[4] E.g. the granting of the imperium to Pompey or the recall of Cicero from exile; Gell. x. 20. 3.

[5] Livy iv. 60. 9; cf. 58. 14.

[6] Cato, *Orig.* iv. 13; n. 2 above.

[7] Lange, *Röm. Alt.* ii. 598 f.; Herzog, *Röm. Staatsverf.* i. 111 ff. The election of a king was a iussus populi, which was equivalent to a lex; Livy i. 22. 1. For an election by the centuriate assembly, see Livy vii. 17. 12. The lex curiata de imperio was regarded strictly as an election; p. 184 ff. On judicial decisions see Lange, ibid. i. 629 f.; ii. 571.

[8] Cic. *Div.* ii. 35. 74: "Ut comitiorum vel in iudiciis populi vel in iure legum vel in creandis magistratibus"; *Leg.* iii. 3. 10; 15. 33. Iudicia populi practically disappeared, leaving comitia legum and comitia magistratuum; idem, *Sest.* 51. 109; cf. Mommsen, *Röm. Staatsr.* iii. 326, n. 1.

[9] The usual expression for the validity of a law is lege populus tenetur; cf. Cic. *Dom.* 16. 41; *Phil.* v. 4. 10; Gell. xv. 27. 4; Gaius i. 3. For further citations, see Rubino, *Röm. Verf.* 356, n. 1; Mommsen, *Röm. Staatsr.* iii. 159, n. 1, 309, n. 3.

great power, as temporary functionaries they belonged to the people, along with whom they were bound by the laws.[1]

To the end of the regal period the legislative activity of the people remained narrowly restricted. The body of leges regiae, described as curiate by Pomponius [2] on the supposition that they were passed by the assembly under royal presidency,[3] was little more than the ius pontificum — the customary religious law — with whose making the curiae had nothing to do.[4] If the king wished to admit new citizens,[5] erect public works, levy forced labor on the citizens,[6] reform the military organization,[7] punish a man with chains or death,[8] make a treaty, or even declare an offensive war, no power compelled him to submit the measure to the citizens. Although he must often have found it expedient to engage their coöperation in national enterprises, or more rarely in a legal innovation,[9] it may be stated with confidence that before the beginning of the republic the curiate assembly had not acquired the right to be consulted on any of these matters — that its slight activity in legislation and administration was a concession from the king rather than a right; for under the republic such activity, gradually increasing, belonged to the centuries and the tribes. We may accept without hesitation the

[1] Cf. Livy. ix. 34. 8–10.

[2] *Dig.* i. 2. 2. 2.

[3] Ascribed to Ancus Marcius by Livy (i. 32. 2) and Dionysius (iii. 36. 2 ff.), to Romulus and his successors by Pomponius (ibid.), but destroyed in the Gallic conflagration (Livy vi. 1. 1).

[4] Lange, *Röm. Alt.* 1. 314 f.; Voigt, in *Abhdl. d. sächs. Gesellesch. d. Wiss.* vii (1879). 559; Schrader, *Reallexikon*, 657 f.

[5] The sources uniformly represent the kings as acting alone in the admission of individuals and of entire communities to citizenship. The view of Mommsen, *Röm. Staatsr.* iii. 29, that the assembly coöperated rests upon his theory of an original popular sovereignty and of an original patrician state, neither of which has any basis in fact.

[6] Cic. *Rep.* v. 2. 3; Livy 1. 38. 7; 44. 3; 56. 1 f.

[7] Ibid. i. 43.

[8] Ibid. i. 44. 1; cf. especially the summary condemnation and execution of Mettius; ibid. i. 28. Livy's complaint (i. 49. 4) against Tarquin the Proud is that he decided capital cases without assessors, not that he allowed no appeal.

[9] Lange's view (*Röm. Alt.* i. 314) that under the kings there was no legislation, except the passing of the lex de imperio, cannot be proved and seems unlikely. Mommsen's hypothesis (*Röm. Staatsr.* iii. 327) that under the kings the comitia were exclusively legislative, elective and judicial functions being a republican innovation, is disproved by the facts presented in this chapter. There is no reason for supposing that the republic brought to the comitia any absolutely new functions.

principle that in form if not in substance the curiae retained all the powers which they had ever actually possessed.

Judicial business, which no one has ever assumed to be a primitive function of the Roman assembly, needs no long consideration here. Among the early Indo-Europeans the settlement of disputes and the punishment of most crimes were in the hands of the families and brotherhoods; only treason and closely related offences were noticed by the state; and these cases were tried by the king in the presence of the assembly.[1] The religious ideas attaching to crime and punishment[2] in early Rome suggest that the priests had the same connection with these matters there as among the Celts and Germans. That condition yielded to the growing authority of the king, who is represented by the ancients as wielding an absolute power of life and death over his people and as allowing in capital cases an appeal to the assembly at his own discretion.[3] From the general conception of the relation between king and assembly as established in this chapter, it is necessary to infer that if the people had any claim to a share in the jurisdiction, it must have been slight as well as vague, and one which they were in no position to enforce.

A review of the individual kings might give the impression that an act of the assembly was unessential to filling the regal office. Not only were Romulus and Tatius kings without election,[4] but according to Livy[5] Numa's appointment was made by the senate alone; and Servius ruled long and introduced his great reforms before his election.[6] Tarquin the Proud to the end of his reign was neither appointed by the senate nor chosen by the people.[7] From these four or five instances of kings who ruled without election, as well as from the fact that both the dictatorship — a temporary return to monarchy — and the office of rex sacrorum — the priestly successor to the monarch — were filled by appointment, we might

[1] Schrader, *Reallexikon*, 662. [2] Greenidge, *Leg. Proced.* 298 f.

[3] Cf. Livy i. 26. 8 ff.; Cic. *Mil.* 3. 7; Greenidge, *Leg. Proced.* 8, 305 ff.

[4] Cic. *Rep.* ii. 2. 4; 7. 13; Livy i. 13. 4.

[5] I. 17. 11. Cicero (*Rep.* ii. 13. 25), however, supposes he was elected by the people.

[6] Cic. *Rep.* ii. 21. 37; Livy i. 41–6; Dion. Hal. iv. 8. [7] Livy i. 49. 3.

infer that the kingship was not elective.[1] But on the other hand the word interregnum, which could not have been invented in the republican period and which involves the idea of election, as well as the general custom of choosing kings among primitive European peoples, may be added to the authority of our sources[2] in favor of an elective monarchy in earliest Rome. The nomination of the king by the competent person was perhaps acclaimed in a contio in some such way as among the early Germans. Such an election, we may suppose, was in the beginning legal without further action on the part of the people. But the accession of a king was a momentous event in the life of a generation — far more important than the annual declaration of war upon a neighbor — and the advantage of a formal vote of the curiate assembly, after its institution, was obvious both to the king and to the sacerdotes; it gave to the former the solemn oral pledge of obedience from the citizens, and to the latter an opportunity to influence the proceedings through the auspices and through the manipulation of the calendar.

Under this system the king after his appointment by his predecessor or by the interrex, and after the acclamation in contio if such action took place, convoked the curiae on the first convenient comitial day of his reign,[3] having held favorable auspices in the morning, and proposed to them a rogation[4] in some such form as the following: "Do you consent, and regard it as just and legal, that I, whom the populus has designated king, should exercise imperium over you?" This rogation, answered affirmatively by a majority of the curiae, became a lex curiata de imperio.[5] The informal acclamation, if it was the custom,

[1] Cf. Mommsen, *Röm. Staatsr.* ii. 6 f.

[2] Cf. Cic. *Rep.* ii. 13. 25; 17. 31; 18. 33; 20. 35; Livy i. 17. 10; 32. 1; 35. 1, 6; 46. 1; Jordan, *Könige im alt. Ital.* 25 ff.

[3] Cf. Livy xxii. 35. 4.

[4] Cic. *Rep.* ii. 13. 25 (Numa); 17. 31 (Tullus Hostilius); 18. 33 (Ancus Marcius); 20. 35 (Tarquinius Priscus).

[5] The formula for the curiate law is unknown. Lange, *Röm. Alt.* i. 307 ff. 407 f., 459, 461 f., supposes that it not only pledged the people to obedience, but also defined the imperium and bound the king not to exceed the limitations imposed; that every constitutional modification of the imperium required a corresponding modification of the curiate act. Herzog, *Röm. Staatsverf.* i. 111 f., further assumes that the law contained the formula of treaty on which in his opinion the state rested,

must have disappeared in time, and the passing of the curiate law was looked upon as the election proper.[1]

Concessions to the people develop into popular rights. The citizens, deeply interested in the choice of a man who for the remainder of his life was to represent their community before the gods, lead them in war, and exercise over them the power of life and death, claimed as their first active political right the ius suffragii in the passing of this lex curiata de imperio. Hence after the institution of the republic and of the comitia centuriata, the curiae clung obstinately to this inalienable prerogative.[2]

The development of the elective process outlined above is offered in explanation of the curious phenomenon that under the republic, while all other acts of the centuriate and tribal assemblies required no confirmation by the curiae, elections by these assemblies did require such a sanction. This explanation is the only one proposed which accords with the Roman interpretation of the peculiarity. According to Cicero it was pro-

and that before the age of written documents this treaty was handed down orally through the repetition of the law. Lange's theory, which runs throughout his great work, seems to rest on the single statement of Tacitus, *Ann.* xi. 22: "Quaestores regibus etiam tum imperantibus instituti sunt, quod lex curiata ostendit a L. Bruto repetita." But this statement proves only that the quaestors were mentioned in the curiate law, and this circumstance is otherwise explained below, p. 189. That the law defined and limited the imperium is unlikely (1) because in early time, when the act had a real meaning, precise definitions were unknown; (2) because there is no evidence for it.

P. Servilius Rullus stated, evidently in his rogation, that the object of the curiate act to be passed for the decemviri provided for in his bill was "ut ii decemviratum habeant, quos plebs designaverit" (Cic. *Leg. Agr.* ii. 10. 26) — a formula probably copied from earlier laws. From this statement and from evidence furnished below (p. 185 f.) it is practically certain that the formula for the curiate act ran somewhat like that for an election.

[1] It is true that Cicero (p. 183, n. 2) supposes the king to have been elected by the curiate assembly, and the imperium to have been afterward sanctioned by the same assembly. This double vote of the curiae seems as improbable as it was unnecessary. We may reasonably consider the alleged first vote a mistaken inference from the later election of higher magistrates by the centuries. The assumption of an acclamation as the first stage in the process accords far better with primitive conditions.

[2] The people claimed that the right to elect magistrates had come down to them from Servius Tullius; Appian, *Lib.* 112 (probably from Polyb.); Livy i. 60. 4; p. 360.

vided that in the case of all elective magistrates the people should vote twice on each that they might have an opportunity to correct what they had done, if they repented of having conferred an office on any person. In the case of the censors this second vote was cast in the comitia centuriata; all other elective magistrates received it in the curiate assembly.[1] Rubino[2] and others have objected that Cicero's interpretation of the curiate law is biassed by his desire to contrast the essentially antipopular character of the demagogue Rullus,[3] who by the terms of his agrarian law would deprive the people of their right to vote even once in the election of officials, with the wise and moderate statesmen of old, who were so devoted to the people as to allow them two opportunities to express their choice in the case of each magistrate. The orator, it is urged, could not himself know the original intention of the usage; and his interpretation is contradicted by the fact that the person who proposed the lex curiata was already a magistrate, the voting on this lex being subsequent to the election and forming no part of it.[4]

In favor of Cicero's interpretation it may in the first place be stated that he was not simply offering a conjecture as to the original intention of the usage, but was interpreting the formula of the law as it existed in his own day. There would be no point to his interpretation unless the formula ran somewhat like that of an election; and he affirms definitely that the law bestows the magistracy upon a person who has already received the same office from other comitia — that it is, in other words, a second bestowal of the office.[5] That this interpretation is not a mere invention of Cicero is proved by a statement of Messala[6] that

[1] Cic. *Leg. Agr.* ii. 11. 26: "Maiores de singulis magistratibus bis vos sententiam ferre voluerunt. Nam cum centuriata lex censoribus ferebatur, cum curiata ceteris patriciis magistratibus, tum iterum de eisdem iudicabatur, ut esset reprehendendi potestas, si populum beneficii sui paeniteret"; cf. 10. 26; *Rep.* ii. 13. 25.

[2] *Röm. Verf.* 361 f., 379 f. For a summary of the various modern views, see Nissen, *Beitr. zum röm. Staatsr.* 42–6.

[3] P. 435.

[4] It is not probable that an official could pass the law for a colleague, the intention being that each higher magistrate should personally propose and carry it for himself; cf. Mommsen, *Röm. Staatsr.* i. 610, n. 2.

[5] *Leg. Agr.* ii. 10. 26: "Hoc inauditum et plane novum, ut ei curiata lege magistratus detur, cui nullis comitiis ante sit datus."

[6] In Gell. xiii. 15. 4: "Magistratus . . . iustus curiata datur lege."

the magistracy in the strict legal sense of the term is granted by the curiate law. And the point maintained by Messala is further confirmed by that article of the agrarian rogation of P. Servilius Rullus which provides that the decemviri agris adsignandis may, if necessary, dispense with the curiate law and yet be "decemvirs in as legal a sense as are those who hold the office according to the strictest law."[1] In other words, the person who has been elected by the comitia centuriata or tributa is a magistratus, though not a magistratus iustus or optimo iure (optima lege); the completion of all formalities, ending with a second election (by the curiae), is essential to the latter.

Optimo iure requires explanation. It often signifies "with perfect justice," "most deservedly."[2] Closely related to this meaning is that of "perfect formality," as in making a bequest[3] or in creating a sacerdos[4] or a magistrate.[5] In this sense optimo iure is interchangeable with optima lege. Developed in another direction, either phrase readily gives the idea of completeness or perfection of title, not only to property,[6] but also to office.[7] One who holds a perfect title to a property, or has

[1] In Cic. *Leg. Agr.* ii. 11. 29: "Tum ii decemviri, inquit, eodem iure sint, quo qui optuma lege." In keeping with this statement is the object of the curiate act as given by the Servilian rogation (p. 183, n. 5).

[2] Plaut. *Most.* 713; Cic. *Off.* i. 31. 111; 42. 151; *Fin.* iv. 12. 31; *Rep.* iii. 17. 27; *Cat.* i. 9. 21; *Sest.* 43. 94; *Planc.* 36. 88; *Marc.* 1. 4; *Fam.* iii. 8. 6; *Att.* xv. 3. 2.

[3] Gaius ii. 197: "Proinde utile sit legatum atque si optimo iure relictum esset; optimum ius est per damnationem legati." It is clear that this statement refers merely to the form.

[4] Fabius Pictor, in Gell. i. 12. 14: "Uti quae optima lege fuit, ita te, Amata, capio."

[5] Cic. *Phil.* xi. 12. 30: "Senatui placere C. Cassium pro consule provinciam optinere, ut qui optimo iure eam provinciam optinuerit" (with all the formality usual in cases of appointment to that province); v. 16. 44: "Sit (Caesar) pro praetore eo iure quo qui optimo."

[6] Cic. *Har. Resp.* 7. 14 (reference is to the complete and perfect title with which Cicero holds his dwelling); *Phil.* ix. 7. 17 (a burial place granted by the state to a family with a perfect title); *Lex Agr.* (*CIL.* 200) 27: "*Is ager locus do*mneis privatus ita, utei quoi optuma lege privatus est, esto."

[7] *Lex Col. Gen.* (*CIL.* ii. Supplb. 5439) 67: "Quicumque pontif(ices) quique augures c(oloniae) G(enetivae) I(uliae) post h(anc) l(egem) datam in conlegium pontific(um) augurumq(ue) in demortui damnative loco h(ac) lege lectus cooptatusve erit, is pontif(ex) augurq(ue) in c(olonia) Iul(ia) in conlegium pontifex augurq(ue) esto, ita uti qui optuma lege in quaque colon(ia) pontif(ices) auguresq(ue) sunt erunt"; ch. 66: "Ei pontifices c(oloniae) G(enetivae) I(uliae) sunto, . . . ita uti qui optima lege optumo iure in quaque colon(ia) pontif(ices) augures sunt erunt."

been granted a civil status[1] or an office[2] in a perfectly legal way, necessarily enjoys all the immunities, honors, and powers inherent in such absolute condition. To indicate that due legality has been observed in the creation of a magistrate, and that the latter has accordingly complete possession of his office, and of all the honors and powers belonging to it, the phrase ut qui optima lege sunt, erunt is often inserted in the formula of appointment or election. These words continued to be used, for example, in the creation of the dictator as long as his power remained absolute, but after it became subject to appeal, they were dropped.[3] The author of the act was at the same time author of the condition attaching to it expressed by the phrase under consideration: in the appointment of a dictator it was the consul; in the creation of a promagistrate or the assignment of a province it might be the senate.[4] Laws must often have contained provisions that the magistrates created under them should be ut qui optima lege.[5] The Servilian bill most probably included an article of the kind for the decemviri agris adsignandis to be elected under it. But as the title to an office was impaired by any informality in the elective process, and as Servilius foresaw that the lex curiata might be prevented by tribunician intercession or other cause, he inserted in his bill a further provision, referred to above,[6] that the decemviri might be officials optima lege[7] even without the curiate sanction.

Optima lege refers to the perfection of their right to the sacerdotal places (cf. 67 above), whereas optumo iure seems to apply to the privileges and honors attaching to these positions.

[1] Papinian, in *Dig.* iv. 4. 31 (slaves manumitted in the way here described were exempt from payment to maintain their freedom, on the ground that they were emancipated in a perfectly legal way — optimo iure); *Lex Salp.* (*CIL.* ii. 1963) 28: "Ut qui optumo iure Latini libertini liberi sunt erunt" (Just as are, or shall be, Latin freedmen or freemen of best standing); Cic. *Verr.* II. v. 22. 58: "Quae colonia est in Italia tam bono iure, quod tam immune municipium, quod . . . sit usum."

[2] *Lex Col. Gen.* 67, quoted in n. above.

[3] Fest. 198. 32; cf. 189. 21. Applied to the censor, dictator, and interrex in Livy ix. 34. 10–12, it has reference not to amount of power but length of office.

[4] See p. 186, n. 5.

[5] As the *Lex Col. Gen.* 66 f.; p. 186, n. 1 above. [6] P. 186.

[7] Magistratus optuma lege is the same as magistratus iustus; cf. Messala, p. 185, n. 6. In this connection iustus does not signify legal as opposed to illegal, but legally or technically perfect, correct; cf. for the meaning "proper," "perfect," Cic. *Fam.* ii. 10. 3 (iusta victoria); Caes. *B. G.* i. 23 (iustum iter); Livy i. 4. 4 (iusti cur-

From what is here said it is clear that the condition of iustus or optima lege was not obtained for a magistrate by the passing of the curiate act alone, but rather by due attention to all formalities,[1] which were brought to completion by that act.

The formula for the curiate law, in addition to its resemblance to that for elections, must have contained some reference to the imperium, as we may infer from the frequent designation of the law as a lex de imperio by Cicero. From this phrase modern writers infer that the curiate act conferred the imperium upon newly elected magistrates. The question whether it granted to a magistrate powers which he did not already possess will be considered below. For the present it is enough to state that in no instance do the ancients speak of "conferring" the imperium by the curiate law or of deriving the imperium from that law by any process whatsoever. But mention is made of conferring the imperium by a decree of the senate or by the suffrages of the people in the centuriate or tribal assembly[2] and of *confirming* it by the curiate law.[3]

sum amnis); xxxix. 2. 8 (iusto proelio). When Cicero (*Red. in Sen.* 11. 27), accordingly, speaks of the comitia centuriata as the iusta comitia, he does not imply that the other comitia and their acts lack legality, but rather that they carry less weight; and when as late as 300 the patricians claimed that they alone had iustum imperium et auspicium (Livy x. 8. 9), they could only mean that their right to these powers was better established than that of the plebeians. C. Flaminius, consul in 217, possessed imperium, which he was actually exercising over his troops, but which was not iustum, for he had neglected the auspical formalities appropriate to the entrance upon the consulship (Livy xxii. 1. 5). It would be wrong, however, to suppose with Nissen, *Beitr. z. röm. Staatsr.* 51, that he commanded on the sufferance only of his soldiers.

[1] Including the auspices; see n. above.

[2] The usual expression is "de suo imperio curiatam legem tulit," or "populum consuluit;" Cic. *Rep.* ii. 13. 25; 17. 31; 18. 33; 20. 35; 21. 38; Livy ix. 38. 15. According to Cicero, *Phil.* v. 16. 45, the senate grants the imperium to Octavianus, a private citizen. The interrex, who could not have had a curiate law, nevertheless possessed imperium (Livy i. 17. 5 f.), and the absolute imperium was granted by a decree of the senate (Livy iii. 4. 9; Sall. *Cat.* 29; *Hist.* i. 77. 22). See also Cic. *Leg.* iii. 3. 9: "Imperia, potestates, legationes, quom senatus creverit populusve iusserit, ex urbe exeunto;" *Leg. Agr.* ii. 7. 17: "Omnes potestates, imperia, curationes ab universo populo proficisci convenit" (reference cannot here be to the curiate assembly, which in this connection Cicero does not recognize as the people). For the centuriate assembly, see Livy xxvi. 18. 9: "Omnes non centuriae modo sed

[3] Cic. *Leg. Agr.* ii. 11. 27: "Curiatis eam (potestatem) comitiis . . . confirmavit."

The consuls and the praetor were elected by the centuries, and their imperium was sanctioned by the curiae. The dictator, too, was obliged to carry a curiate law.[1] But the quaestors, the curule aediles, and other inferior magistrates, after their election by the tribes, did not themselves convoke the curiae for sanctioning their election; the lex was proposed in their behalf by a higher magistrate.[2] As the origin of this custom we may suppose that the kings, and after them the higher magistrates of the early republic, used to ask the people

etiam homines P. Scipioni imperium esse in Hispania iusserunt;" 22. 15: "Centuriam vero iuniorum seniores consulere voluisse, quibus imperium suffragio mandarunt." For the tribal assembly, see T. Annius Luscus, *Orat. adv. Ti. Gracch.* in Fest. 314. 30: "Imperium quod plebes . . . dederat." It is a fact, too, that the tribal assembly had power to abrogate the imperium; Livy xxvii. 20. 11; 21. 1, 4; xxix. 19. 6; cf. p. 342, 360, 367. Also from Cic. *Leg. Agr.* ii. 11. 28 ("Vidit . . . sine curiata lege decemviros potestatem habere non posse, quoniam per novem tribus essent constituti") we must infer that had these decemvirs been elected in the regular way, by the thirty-five tribes, they would have had the potestas without a curiate law. The phrase nullis comitiis in 11. 29 ("Si hoc fieri potest, ut . . . quisquam nullis comitiis imperium aut potestatem adsequi posset, etc.,") implies that the imperium or potestas may be obtained in more than one form of comitia — either the centuriata or the tributa. In the same paragraph he asserts that on the principle followed by Servilius, whom he is assailing, any one could obtain the imperium or potestas without the vote of any comitia, for he does not consider the comitia curiata real comitia, seeing that they have degenerated into a mere form. From these passages it is clear that Cicero believed the imperium or potestas to be conferred by the centuries or tribes and merely confirmed by the curiae.

[1] Livy ix. 38 f.; Dion. Hal. v. 70. 4: Ὃν ἂν ἥ τε βουλὴ προέληται καὶ ὁ δῆμος ἐπιψηφίσῃ. To avoid unnecessary delay the sanctioning act was probably always kept free from the obligation of the promulgatio per trinum nundinum; Livy iii. 27. 1; iv. 14. 1; p. 396 f. below.

[2] The consuls proposed the curiate law for the quaestors; Tac. *Ann.* xi. 22. That these inferior officials required the law is further indicated by Cic. *Phil.* ii. 20. 50. For the lower functionaries in general, see Gell. xiii. 15. 4. The agrarian rogation of Servilius Rullus provided that the praetor should propose the law for the decemviri agris adsignandis required for the administration of his measure; Cic. *Leg. Agr.* ii. 11. 28.

That the magisterial helpers who were in need of the curiate law included not only the quaestors but also the lictors seems to be indicated by Cic. *Rep.* ii. 17. 31: "Ne insignibus quidem regiis Tullus nisi iussu populi est ausus uti. Nam ut sibi duodecim lictores cum fascibus anteire" (the remainder of the sentence is missing). Dion. Hal. ii. 62. 1 ascribes the introduction of the lictors to Tarquin the Elder. This curiate law, however, may not be thought of by Cicero and Dionysius as a mere sanction, but rather as a legislative act which called the lictors into being; cf. Mommsen, *Röm. Staatsr.* i. 372, n. 1, 613, n. 1.

for a pledge of loyalty not only to themselves but also to their assistants, and that this custom continued even after they had come to be elective magistrates. To functionaries who lacked the imperium the expression lex de imperio could not apply; lex de potestate, though not occurring in our sources, would be the appropriate phrase.

It has generally been assumed that the curiate law bestowed a power in addition to that received through election.[1] Something can in fact be said in favor of this view. We are told that the newly elected magistrate could attend to no serious public business till he had secured the passage of the act:[2] till then the praetor could not undertake judicial business; the consul could have nothing to do with military affairs[3] or hold comitia for the election of his successor.[4] Some of Cicero's contemporaries asserted that a magistrate who failed to pass the law could not as promagistrate govern a province.[5] Or if without a curiate law he made the attempt, he would be obliged to conduct the administration at his own expense;[6] and if as promagistrate he gained a victory in war, he was denied a triumph.[7] Under such conditions it might well be said that a magistrate could engage in no serious public business before he had carried for himself the sanctioning law. But practice diverged widely from these rules. An act containing a provision for the election of functionaries might include a dispensing clause to the effect that the persons elected shall, in the lack of a curiate law, "be magistrates in as legal a sense as those who are elected according to the strictest forms of law."[8] Yet even without this special provision the magistrate regularly

[1] In the opinion of Lange, *Röm. Alt.* i. 300 ff., the election conferred potestas only, the lex curiata imperium.

[2] Dio Cass. xxxix. 19. 3.

[3] Ibid.; Cic. *Leg. Agr.* ii. 12. 30: "Consuli si legem curiatam non habet, attingere rem militarem non licet;" Livy v. 52. 15: "Comitia curiata, quae rem militarem continent." These statements, however, are not, as some have imagined, to the effect that the lex curiata *confers* military power upon the magistrate.

[4] Dio Cass. xli. 43. 3.

[5] Cic. *Fam.* i. 9. 25.

[6] Cic. *Att.* iv. 18. 4: "Appius sine lege suo sumptu in Ciliciam cogitat."

[7] Ibid.

[8] Such an article in favor of the decemviri agris adsignandis appeared in the Servilian agrarian rogation of 63; Cic. *Leg. Agr.* ii. 11. 29; cf. p. 186.

attended to much business before passing the law. The first public act of the consul, praetor, or other magistrate was to take the auspices, to determine whether his magistracy was acceptable to the gods;[1] and another auspication was held for the meeting of the curiae.[2] It was customary, too, for the consul to make his vows to the Capitoline Jupiter and to hold a session of the senate, both of which acts had to be auspicated.[3] These facts disprove the theory that the curiate law conferred the auspicium. In the first session of the senate here mentioned not only religious affairs but civil and military matters of great importance were discussed and finally arranged, all of which business was regularly managed without a curiate law.[4] As to other administrative acts it is probable that the want of a lex curiata never hindered the performance of necessary business civil or military. In case of danger to the state the interrex, who wholly lacked the curiate law, or the consul before passing the law could doubtless take command of the army;[5] and it is significant that the unlimited imperium and iudicium were granted the magistrates not by the curiae but by the senate.[6] The law was indeed considered indispensable to the dictator in 310.[7] It is generally assumed by the moderns that C. Flaminius, consul in 217, lacked the law;[8] their reason is the statement of Livy[9] that he entered upon his office not at Rome but at Ariminum. The fact, however, that in this year he carried a monetary statute before his departure for

[1] According to Dion. Hal. ii. 5 f., those who are entering upon an office pass the night in tents and in the morning under the open sky take the auspices. Livy, xxi. 63. 10, states that the consul dons his official robe in his own house, but neither he nor any other authority intimates that the public auspices were taken in his private house, as Mommsen, *Röm. Staatsr.* i. 616, asserts.

[2] Livy ix. 39. 1.

[3] Ibid. xxi. 63. 9; Varro, in Gell. xiv. 7. 9.

[4] Rubino, *Röm. Verf.* 365 ff.

[5] Mommsen, *Röm. Staatsr.* i. 612, n. 1.

[6] Sall. *Cat.* 29: "Ea potestas per senatum more Romano magistratui maxuma permittitur, exercitum parare, bellum gerere, coercere omnibus modis socios atque cives, domi militiaeque imperium atque iudicium summum habere; aliter sine populi iussu nullius earum rerum consuli ius est;" *Hist.* i. 77. 22: (The senate decreed) "uti Appius Claudius cum Q. Catulo pro consule et ceteris quibus imperium est, urbi praesidio sint operamque dent, ne quid respublica detrimenti capiat." The interpretation which includes the interrex, Appius Claudius, with those who possessed the imperium is confirmed by Livy i. 17. 5 f., who informs us that the imperium of an interrex lasted five days.

[7] Livy ix. 38 f.

[8] Cf. Nissen, *Beitr. z. röm. Staatsr.* 51 f.

[9] XXI. 63. 5 ff.

the war [1] proves that he began his official duties at Rome, and that Livy's tirade to the contrary is empty rhetoric. Probably because he departed without attending to the usual auspices, his political opponents were unwilling to admit that he had entered on his office. But the army obeyed his command, his name remained in the fasti as consul, and his monetary law continued in force. Livy, while complaining at length of his failure to take the auspices, says nothing of the curiate law. His silence is significant.[2] We cannot be certain that the lex curiata was not passed in his case; but we have no right to imagine that it was not and then draw far-reaching deductions from our fancy.[3]

A more valuable instance is that of L. Marcius, elected propraetor by the army in Spain in 212.[4] Although he could not have had a lex curiata, the senate, while censuring the election because it transferred the auspices to the camp, did not make the want of the law a ground for declaring the magistracy illegal.[5] A still more famous case is that of the magistrates of the year 49, who with the Pompeian party fled from Rome before carrying a lex curiata, and yet were not prevented by this circumstance from holding military commands during their year of office or from continuing in command into the following year as promagistrates.[6] A further instance is that of Pomptinus, praetor in 63, who had no curiate law; nevertheless as propraetor in 61 he governed Narbonensis where he gained a victory over the Gauls. This fact, too, is evidence that the want of the law did not in practice debar from military commands. From 58 to 54 he waited outside the

[1] Fest. 347. 14; p. 336 below. [2] Cf. Livy xxii. 1. 5 ff.

[3] Nissen, ibid., supposes, too, that Appius Claudius, consul in 179, went to the army without a curiate law and for that reason the soldiers refused to obey him; Livy xli. 10. Livy mentions the neglect of other formalities, but makes no reference to the curiate act.

[4] Livy xxv. 37. 5 f.; cf. xxvi. 2. 1. [5] Ibid. xxvi. 2. 2.

[6] Dio Cass. xli. 43. In this instance the senate had conferred dictatorial power upon the magistrates by its supreme decree (Cæsar, *B. C.* i. 5); that they were constitutionally in command, whereas the general direction of affairs by Pompey, however autocratic, was only informal, is expressly stated by Dio Cass. xl. 43. 5. What Nissen, *Beitr. z. röm. Staatsr.* 53 f., says of these magistrates' lack of military imperium is therefore baseless.

gates of Rome for a triumph. The senate would not grant it and some of the magistrates opposed his effort to obtain it. The privilege was at last given him by the comitia under pretorian presidency.[1] Although the want of the law involved him in inconvenience, he finally accomplished his purpose without it. Appius Claudius, consul in 54, insisted that, should he fail to carry the sanctioning act, he should nevertheless, since he was in possession of a province decreed the consuls of his year in accordance with the Sempronian plebiscite, have imperium by virtue of a Cornelian statute until such time as he should reenter the city.[2] The law of Sulla, to which he referred, probably stated simply that the promagistrate was to retain his imperium till his return to the city, without mentioning the curiate law; and for that reason Appius believed the sanctioning act to be unnecessary. Cicero, who informs us of this matter, inclines to the interpretation of Appius. Our conclusion, accordingly, is that in practice, if not in legal theory, the lex curiata, however convenient it may have been, was not essential to the government of a province or to a military command. It remains to consider whether it was indispensable to the holding of comitia centuriata for elections. The same Appius Claudius maintained that though a curiate law was appropriate to the consul, it was not a necessity,[3] implying that without the law he was competent to perform all the functions of that office. He and his colleague, therefore, who was equally without the law,[4] were ready to hold comitia for the election of successors; and although party complications opposed the election, no one objected to it on the ground that the consuls were incompetent; for postponing the election they resorted to auspical obnuntiations[5] and to prosecutions of the candidates for bribery.[6] Their competence to hold the elective comitia is further established by the senate's desire that they

[1] Cic. *Att.* iv. 18. 4; *Q. Fr.* iii. 4. 6; Dio Cass. xxxvii. 47; xxxix. 65. The praetor was Ser. Sulpicius Galba.

[2] Cic. *Fam.* i. 9. 25; cf. *Q. Fr.* iii. 2. 3; p. 417 below.

[3] Cic. *Fam.* i. 9. 25: "Appius . . . dixit . . . legem curiatam consuli ferri opus esse, necesse non esse."

[4] Cic. *Att.* iv. 17. 2.

[5] Cic. *Att.* iv. 17. 4; *Q. Fr.* iii. 3. 2; cf. p. 111 above.

[6] Cic. *Att.* iv. 17. 3 ff.; 18. 3; *Q. Fr.* iii. 2. 3; 3. 2 f.

should hold them at the earliest possible moment.[1] The ultimate failure of these consuls to elect successors was not owing to any one's objecting to their competence.[2]

Scholars have attached great weight to the case of the magistrates of 49, who with the Pompeian party, as has been stated,[3] left the city before carrying a lex curiata. Though desiring, in the Pompeian camp at Thessalonica, to hold comitia for the election of successors, it was decided that the want of the law rendered the consuls incompetent for the function.[4] But the case requires careful examination. The Pompeians had with them two hundred senators, enough in their opinion to constitute a quorum, and their augurs had consecrated a place for taking auspices; so that it was assumed that the populus Romanus and the entire city were now located in the camp.[5] All these circumstances clearly imply an intention to assume a temporary transfer of the city of Rome to the camp and to conduct the government in that place on the basis of this constitutional fiction. But suddenly the execution of the plan was stopped by the plea that the consuls had no curiate law! The difficulty, however, was not so serious as Dio Cassius and the moderns have supposed. The assumption of the Pompeians that the city of Rome temporarily existed in the camp implied as well the existence of a pomerium, within which the consuls could legally have held a meeting of the curiae.[6] Or in case

[1] Cic. *Att.* iv. 17. 3.

[2] The compact (Cic. *Att.* iv. 17. 2) made between Appius and his colleague in the consulship, 54, parties of the first part, and Memmius and Domitius, candidates for the consulship for the ensuing year, parties of the second part, that the parties of the second part in the event of their election should produce three augurs to testify that the parties of the first part had proposed and carried a lex curiata, or in failure to produce the witnesses should forfeit to the parties of the first part a specified sum of money, assumes, inasmuch as the evidence was not to be forthcoming till after the election, (1) that the lex curiata was not essential to holding the elective comitia, but (2) that it was highly advantageous to the promagistrate. Cicero, who often refers to the postponement of the elective comitia of this year, never intimates that the want of a lex curiata stood in the way.

Varro, consul in 216, must have found it extremely difficult, though perhaps not impossible, after carrying his lex de imperio in the comitium, to complete the consular and pretorian elections in the Campus Martius — all between sunrise and sunset on the same day; Livy xxii. 35. 4.

[3] P. 192.

[4] Dio Cass. xli. 43. 3. Livy, v. 52. 15, proves that the comitia curiata could meet only within the pomerium.

[5] Dio Cass. xli. 43. 2.

[6] Cf. Livy v. 52. 15.

they felt any scruple about the matter, the senate could have decreed the consuls a dispensation from the law for the purpose of holding the elections. That they allowed a mere formality to baulk them is out of the question. The whole situation is made clear by the understanding that the consuls themselves, or more probably Pompey, did not wish elections to be held or a civil government established in the camp; such a proceeding would have disturbed still further the discipline of the army and would have roused jealousies inimical to the cause. On this interpretation the want of a law, especially as it has the appearance of an afterthought, was a mere pretext.

We have seen promagistrates whose election to their respective offices had not been sanctioned by the curiae governing provinces and holding military commands; we have seen consuls who lacked the curiate sanction attending with less inconvenience to all their official duties. The same looseness characterized the application of the law to minor officials. The want of the sanction legally involved curule aediles, quaestors, and all other officials who lacked the right to convoke the curiae; and yet it is impossible that in 54, for instance, when the consuls failed to pass the law, the curule aediles and the quaestors should have remained inactive through the entire year without leaving in our sources some trace of the disturbance caused by the suspension of their administrative functions. Dio Cassius states that no judicial process could be undertaken before the enactment of the law; nevertheless Clodius as aedile in 56 prosecuted Milo before the people prior to the vote on the sanctioning act.[1] The quaestors entered office regularly on December 5;[2] and as the curiate law was carried for them by the consuls, they were necessarily in official duty for some time every year before their election could be sanctioned. It seems clear that ordinarily one curiate law was passed each year, under the joint presidency of the consuls and

[1] Dio Cass. xxxix. 19. 3. The date of the trial was Feb. 7, 56; Cic. *Q. Fr.* ii. 3. 2.

[2] *Lex Cornelia de XX Quaest.* in *CIL.* i. 202; Cic. *Verr.* i. 10. 30; Schol. Gronov. 395. Mark Antony when quaestor performed the functions of his office through the year without the sanctioning law; Cic. *Phil.* ii. 20. 50.

praetors, for all the officials who required it.[1] If that is true, a postponement of the law, or a failure to pass it, affected all the magistrates of the year.

The question as to the meaning of this wide divergence between constitutional theory and actual practice can find an answer only in the history of the curiate assembly. For a time after the founding of the republic it remained politically important. From the institution of the plebeian tribunate (494) to the enactment of the so-called law of Publilius Volero (471) the curiate assembly elected tribunes of the plebs.[2] In 390, according to Livy,[3] it voted the restoration of a citizen from exile. Rubino[4] maintained that this assembly continued to be a real gathering of the people to the year after the battle of Canna[illegible] 215, when the exigencies of the war with Hannibal brought into being a statute whereby the curiate act was passed by a vot[illegible] thirty lictors as the representatives of their respective curiae; in consequence the sanction was reduced to a formality.[5] The passage in Festus on which his theory depends is seriously mutilated; and his attempted restoration is objectionable chiefly (1) because it required no statute to keep the people from attending the comitia curiata,[6] (2) because without a statute a resolution of the assembly was valid, if each voting division was represented by a single person,[7] (3) because the measure, accordingly, to be a relief to existing conditions, must have freed the commander rather than the men from the necessity of going to Rome to enact the curiate law. Whatever may be the true reading,[8] we have a right to infer from the extant fragment

[1] It is always spoken of in the singular, the implication being that one act served for all; cf. especially Caesar, *B. C.* i. 6; Livy ix. 38. 15; Dio Cass. xxxix. 19. 3.

[2] Cic. Frag. A. vii. 48: "Itaque auspicato . . . tr. pl. comitiis curiatis creati sunt"; Dion. Hal. vi. 89. 1; ix. 41. 2; cf. Livy ii. 56. 2; p. 262 below.

[3] V. 46. 10. [4] *Röm. Verf.* 381 and n. 2.

[5] Based on his reading of Fest. 351. 34: "(Triginta lictoribus l)ex curiata fertur; quod Hanni(bal in propinquitate) Romae cum esset, nec ex praesidi(is discedere liceret), Q. Fabius Maximus Verru(cosus egit per tr. pl. et Ma)rcellus cos. facere in(stituit." . . .).

[6] The attendance on the comitia tributa was sometimes as low as five to the tribe; Cic. *Sest.* 51. 109.

[7] Cic. *Leg. Agr.* ii. 7. 16 f.; in connection with the preceding note and p. 127.

[8] Mommsen's restoration is, "(Transit imperium nec denuo l)ex curiata fertur, quod Hanni(bal in vicinitate) Romae cum esset nec ex praesidi(is tuto decedi pos-

(1) that in the year mentioned, owing to the nearness of Hannibal, something was done to relieve officers in the field from the necessity of coming to Rome to propose the law for themselves, (2) that the regulation was permanent.[1] It is known that the consul Q. Fabius Maximus presided at the consular elections for 214.[2] He and M. Claudius Marcellus, who as proconsul was at the time in command of an army, were elected.[3] Down to this time the custom had probably been for men who were reëlected to an office or who passed from a promagistracy to the corresponding magistracy, or the reverse, to reënact the lex curiata. But we may suppose that after the election of 215 Fabius, fearing that both he and Marcellus might be absent on military duty at the opening of their official year, secured the passage of a measure, most likely a senatus consultum,[4] which exempted from the need of repeating the curiate law holders of the imperium who were making the transition above described. In consenting to the arrangement the senate was making a great sacrifice to the exigencies of the situation. For to maintain control over the commanders it had insisted that they should begin their terms with all due formality at Rome.[5] The lex curiata had proved a material help to this end. But now the person already in command might continue from year to year at his

set), Q. Fabius Maximus Verru(cossus M. Claudius Ma)rcellus cos. facere in(stituerunt)"; *Röm. Forsch.* ii. 412; *Röm. Staatsr.* i. 613, n. 3. Bergk, *Rhein. Mus.* N. F. xix (1864). 606, with less success proposes translatione imperii; cf. also Herzog, *Röm. Staatsverf.* i. 679. The passage is in fact past healing, though Mommsen's reconstruction is an improvement on Rubino's.

[1] The second inference is from the present tense of the verb "fertur."

[2] Livy xxiv. 7–9.

[3] Ibid. 9. 3.

[4] Cf. Herzog, *Röm. Staatsverf.* i. 679. It is not to be assumed, however, that the senatus consultum had to be repeated at every such case of transition. Lange, *Röm. Alt.* ii. 175, 704 f., who gives the measure a wider constitutional scope, assumes that it was a plebiscite. Mommsen, *Röm. Forsch.* ii. 413, supposes that the two consuls on entering office in 214 simply omitted the curiate sanction on the ground that they already held the imperium, which was unlimited in duration, and that the jurists accepted this procedure as constitutional. The specific motive for this action, Mommsen asserts, was the fact that they were absent from Rome at the opening of their official year. But the truth is that they were both present (Livy xxiv. 10 f.), and had accordingly no occasion for establishing such precedent on their own responsibility. All they did in the matter, then, was to take advantage of a measure already enacted.

[5] Cf. Livy xxi. 63; xxii. 1.

post, relieved of the need of coming to the capital, where he would be temporarily subject to senatorial control.

This provision of 215 was therefore an important step in the development of the imperium; and at the same time it tended to destroy the little importance still attaching to the curiate law. It seems to have been after this event and partly in consequence of it[1] that the comitia curiata, which had long been declining, became at last a mere formality, attended by none but three augurs as witnesses to the proceedings[2] and thirty lictors,[3] who meekly[4] cast the votes in obedience to the command of the presiding magistrates.[5] It is a noteworthy fact that whereas the statesman Cicero has much to say of the curiate law, Livy and Dionysius make little reference to it. Our conclusion must be that it was more important in the late republic than in the earlier time. Probably it nearly fell into disuse after 215, to be revived some time before Cicero. Its rehabilitation was the work of the optimates, for we find the senatorial party chiefly interested in maintaining it during the age of Cicero. Since the lex curiata, subject as it was to impetrative auspices and to obnuntiations, correlated closely with the Aelian and Fufian statutes, we may reasonably connect its revival closely with their origin. Cicero[6] tells us accordingly that the comitia curiata have continued merely for the sake of the auspices. The curtailment of the power of this assembly is analogous to the curtailment of the power of the king; as the latter was reduced, in the rex sacrorum, to a shadow continued merely for a religious purpose, the curiate comitia were likewise reduced to a shadow maintained in appearance merely for keeping up an ancient custom and for the auspices connected therewith,[7] but in reality as a part of the religious

[1] The existence of the measure of 215 proves that the curiate assembly and curiate law were at the time something more than a mere formality.

[2] Cic. *Att.* iv. 17. 2; cf. p. 113, 194, n. 2. The Ciceronian passage, our only authority on this point, seems to imply a custom. [3] Cic. *Leg. Agr.* ii. 12. 30.

[4] On the servility of the lictors, see Cic. *Verr.* ii. 29. 72; *Pis.* 22. 53.

[5] That the comitia curiata were no longer attended by the people in the time of Cicero is attested by *Leg. Agr.* ii. 11. 27: "Curiatis . . . comitiis, quae vos non initis"; cf. n. 6.

[6] *Leg. Agr.* ii. 11. 27. On the Aelian and Fufian statutes, see p. 116, 358 f.

[7] Cic. *Leg. Agr.* ii. 12. 31: "Illis (comitiis) ad speciam atque ad usurpationem vetustatis per . . . lictores auspiciorum causa adumbratis."

machinery operated with more or less effect for controlling refractory office-holders. During the age of Cicero the senate strove to uphold its theory of the necessity of the law, while individuals in office and even the entire group of magistrates for the year looked upon it as appropriate indeed but unessential to their functions. At its best the theory could be but partially realized in practice.

Naturally the lictors never refused to vote the lex curiata, but it was often prevented or delayed by the intercession of the plebeian tribunes.[1] As we hear nothing of such action of the tribunes in the early republic we may well conclude that it was a late usurpation. Their veto could be offset by a special resolution of the people for dispensing the persons elected from the need of the curiate sanction.[2] In destroying the tribunician power Sulla, perhaps consciously, strengthened the lex curiata as a weapon in the hands of the senate. He did not treat the subject, however, with his usual precision; for in 54 we find Appius Claudius appealing to a Cornelian law in justification of his intention to govern a province without the sanction.[3] The procedure of Appius must have robbed the sanctioning act of the little vitality which it still possessed. With the downfall of the republic it fell completely into disuse.[4]

I. Comparative View: Spencer, H., *Principles of Sociology*, ii. chs. viii, ix; Post, A. H., *Grundlagen des Rechts*, 130–6; *Die Anfänge des Staats- und Rechtsleben*, 113 f.; Jenks, E., *History of Politics*, chs. ix, xi, xii; Schrader, O., *Reallexikon*, 923–5; *Sprachv. u. Urgesch.* ii³ (1907). 376; Leist, B. W., *Alt-arisches Jus Gentium*, see index, s. Jus; *Alt-arisches Jus Civile*, i. 337 ff., 368 ff. (fas, ius, lex); Hirt, H., *Indogermanen*, ii. 522–31 (fundamental ideas of right and law); Brunner, H., *Deutsche Rechtsgeschichte*, i. 128–32; Schröder, R., *Lehrbuch der deutschen Rechtsgeschichte*, 21–7; Cramer, J., *Verfassungsgeschichte der Germanen und Kelten* (Berlin, 1906); Seeck, O., *Geschichte des Untergangs der antiken Welt*, i. 212–4; Kovalevsky, M., *Modern Customs and Ancient Laws of Russia*, chs. iv, v; Ginnell, L., *Brehon Laws*, ch. iv; Hermann-Thumser, *Griech. Staatsaltertümer*, 67–9 (Homeric); 166–76 (Lacedaemonian); 504–38 (Athenian); Gilbert, G., *Constitutional Antiquities of Sparta and Athens*, 50–2 (Lacedaemonian); 285–310 (Athenian);

[1] Cic. *Leg. Agr.* ii. 12. 30: "Consulibus legem curiatam ferentibus a tribunis plebis saepe est intercessum"; cf. Dio Cass. xxxix. 19. 3.

[2] Cic. *Leg. Agr.* ii. 11. 29; p. 227 above.

[3] Cic. *Fam.* i. 9. 25; p. 193 above.

[4] Herzog, *Röm. Staatsverf.* ii. 905.

Buchholz, E., *Homerische Realien*, ii. 24–7; Seymour, T. D., *Life in the Hom. Age*, 101–9; Moreau, F., *Les assemblées politiques d'apres l'Iliade et l'Odyssée*, in *Revue des études Grecques*, vi (1893). 204–50; Finsler, G., *Das homerische Königtum*, in *N. Jahrb. für kl. Alt.* ix (1906). 313–36; Fustel de Coulanges, *Ancient City*, 216 f., 244 ff., 329; *Histoire des institutions politiques de l'ancienne France: La Gaule Romaine* (1891); *L'invasion germanique* (1891); *La monarchie Franque* (1888); Farrand, L., *Basis of American History*, see index, s. Council; Bernhöft, F., *Staat und Recht der röm. Königszeit*, 145–56.

II. The Comitia Curiata: Schulze, C. F., *Von den Volksversammlungen der Römer*, 282–307; Newman, *On the Comitia Curiata*, in *Classical Museum*, xx (1848). 101–27; Mommsen, *Die patricisch-plebejischen Comitien der Republik*, in *Röm. Forschungen*, i. 140–50; *Nichtexistenz patricischer Sonderversammlungen in republikanischen Zeit* ibid. i. 167–76; *Bürgerschaft und Senat der vorgeschichtlichen Zeit*, ibid. i. 269–84; *Die lex curiata de imperio*, in *Rhein. Mus.* N. F. xiii (1858). 565–73; *History of Rome*, bk. 1. ch. v; *Röm. Staatsrecht*, i. 609–15; iii. 33–42, 316–21; Obudzinski, *Die Kuriat- und Centuriatkomitien der Römer;* Kappeyne van de Coppello, J., *Comitien*, 60–86; Hallays, A., *Comices à Rome*, ch. i; Morlot, E., *Comices électoraux*, ch. ii; Soltau, W., *Altröm. Volksversammlungen*, 37–106; Humbert, G., *Comitia*, in Daremberg et Saglio, *Dict.* i. 1374–7; Liebenam, W., *Comitia: I. Curiata*, in Pauly-Wissowa, *Real-Encycl.* iv. 682–6; *Curiata Lex*, ibid. iv. 1826–30; Hüllmann, K. D., *Ursprünge der röm. Verfassung*, 96–8; Rubino, J., *Röm. Verfassung und Geschichte*, 233 ff.; Madvig, J. N., *Verfassung und Verwaltung des röm. Staates*, i. 222–6; Lange, L., *Röm. Altertümer*, i. 396–413; Mispoulet, J. B., *Institutions politiques des Romains*, i. 194–203; Willems, P., *Droit public Romain*, 49–54; Herzog, E., *Röm. Staatsverfassung*, i. 106–18, 1059–65; Schiller, H., *Röm. Alt.* iv. 628 f.; Karlowa, O., *Röm. Rechtsgeschichte*, i. 48–54, 382–4; Greenidge, A. H. J., *Roman Public Life*, 250 f.; *Legal Procedure of Cicero's Time*, 297–307; Abbott, F. F., *Roman Political Institutions*, 14 f., 18–20, 252 f.; Voigt, M., *XII Tafeln*, i. 97–124 (ethical laws, fas, ius, etc.); *Leges regiae*, in *Abhdl. d. sächs. Gesellsch. d. Wiss.* vii (1879). 555–826; Bernhöft, ibid. 145–160; Genz, H., *Das patricische Rom*, 51 ff.; Seeley, J. R., *Livy*, 62–70; Munderloh, *Aus der Zeit der Quiriten*, 4 f.; Clason, D. O., *Kritische Erörterungen über den röm. Staat*, 1–30; Hoffmann, E., *Patricische und plebeiische Curien;* Nissen, A., *Beiträge zum röm. Staatsrecht*, 39 ff.; Le Jeune, M. L., *L'imperium des magistrats de Rome sous le République;* Schwegler, A., *Röm. Geschichte*, i. 663–7; Ihne, W., *History of Rome*, i. 113 f.; Peter, C., *Geschichte Roms*, i. 59 f.; Dunning, W. A., *History of Political Theories Ancient and Mediaeval*, 107 ff.; Willoughby, W. W., *Political Theories of the Ancient World*, ch. xvi; Nettleship, H., *Contributions to Latin Lexicography*, 497–500 (ius), 515–7 (lex); Rothstein, M., *Suffragium*, in *Festschrift zu Otto Hirschfelds 60sten Geburtstage*, 30–3; Botsford, G. W., *Lex Curiata*, in *Pol. Sci. Quart.* xxiii (1908). 498–517.

CHAPTER X

THE ORGANIZATION OF THE COMITIA CENTURIATA

I. *In the Early Republic*

From the point of view of the Roman historians the centuriate assembly,[1] planned by Servius Tullius, came into existence at the beginning of the republic; its earliest act in their opinion was the election of the first consuls[2] and its earliest statute the Valerian law of appeal.[3] Though they could not know precisely when it voted for the first time, they were right in understanding it to have been the basal comitia of the republic during the patrician supremacy. It may not have been instituted till some time after the downfall of the kingship,[4] and it certainly

[1] This chapter historically follows ch. iv.

[2] Livy i. 60. 4. This is the first act which Livy records, and it is his opinion that the last king never consulted the people; i. 49. 3. His view harmonizes with that of Dionysius, iv. 40. 3, that Servius intended to resign his office and establish a republic, had he lived.

[3] Cic. *Rep.* ii. 31. 53: "(Valerius Poplicola) legem ad populum tulit eam, quae centuriatis comitiis prima lata est." Dionysius, iv. 20. 3, supposes that Servius actually used this assembly for elections, legislation, and declarations of war, that Tarquin the Proud set aside the Servian arrangement (iv. 43. 1), which was restored at the beginning of the republic. The first of these ideas is an inference from republican usage, not based on knowledge of any definite act of the assembly in the regal period. In this matter, Soltau, *Altröm. Volksversamml.* 264, has given him too much credit.

[4] An objection to the view represented by Soltau, ibid. 270–5, that the coöperation of the army in the overthrow of Tarquin the Proud caused its immediate transformation into the comitia centuriata, is that we have no ground for accepting as historical the details of the overthrow to which he calls attention. In p. 285–96 he attempts to reconstruct the earliest constitution of the republic on the theory that the army elected the consuls (283), that for a time those who were not actually on military duty were excluded from a vote in the centuriate assembly. The sources give no information regarding such an assembly, and we have no right to assume it, at least as a regular, recognized institution, for any period however early. Lange, *Röm. Alt.* i. 465, supposes that with the founding of the republic the assembly began to diverge from the army, the two institutions having previously been identical; cf. Guiraud, in *Rev. hist.* xvii (1881). 1.

did not reach its full complement of a hundred and ninety-three centuries till more than a hundred years after that event.

Through the early republic Rome was engaged in an almost unceasing struggle for existence. The army was constantly in the field; and the consuls from the praetorium issued their commands for the protection and the government of the city. Their measures, after discussion in the council of war, they must often have submitted to the approval of the army. The military contio was sometimes summoned for exhorting the men,[1] for promising the reward of spoil in case of victory,[2] for reprimanding as well as for encouraging.[3] On one occasion the master of horse, calling a contio of soldiers, appealed to them for protection from the dictator,[4] and they replied with a shout that they would allow no harm to befall him.[5] Thereupon the dictator summoned another contio to witness the court-martial of the rebellious officer.[6] On another occasion the consuls asked the soldiers to decide a question by acclamation, and they obeyed.[7] We hear of the adjournment of a meeting on the motion of a military tribune.[8] After a victory, honors and rewards were granted by vote of the soldiers.[9] For acclamation, the regular form of voting,[10] was sometimes substituted a division of the army to right and left for the sake of silence.[11] A military assembly, meeting at Veii, decided upon the appointment of Camillus, then in exile, to the dictatorship, and despatched the resolution to Rome.[12] In the year 357 the consul Cn. Manlius held a tribal assembly of his troops at Sutrium, and passed in it a law which imposed a tax of five per cent on the manumission of slaves.[13] Long afterward the army in Spain elected a propraetor.[14] It may be that much other political business was decided by the army in the troublous times which followed the overthrow of the kings. Although such acts were valid, they were always of an exceptional nature, and they ran counter to the spirit of the constitution, which

[1] Livy ix. 13. 1. [2] Livy vii. 16. 4. [3] Livy v. 28. 7; vii. 36. 9.
[4] Livy viii. 31. [5] Ibid. 32. 1. [6] Livy viii. 32 f.
[7] Livy x. 19. 11. [8] Livy vii. 36. 9. [9] Ibid. ch. 37, especially § 9.
[10] Cic. *Fam.* xi. 13. 3; Livy vii. 37. 9; viii. 32. 1; ix. 13. 1; x. 19. 11; xxviii. 26. 12; xl. 36. 4; xlii. 53. 1; Dion. Hal. iii. 13. 1.
[11] Livy vii. 35. 1 f. [12] Livy v. 46. 5 ff. [13] Livy vii. 16. 7; p. 297.
[14] Livy xxvi. 2. 2 (211 B.C.). On the military contio, see also p. 140.

granted to all the citizens, not to those merely who chanced to be on military duty, a voice in the decision of such public affairs as came before the people.

It is true that the centuriate assembly, having developed from the army, showed pronounced military features. It could not be convoked within the pomerium, for the reason that the army had to be kept outside the city;[1] before the reform it met ordinarily in military array under its officers and with banners displayed;[2] the usual place of gathering was the Campus Martius; and no one but a magistrate cum imperio could under his own auspices convoke it for the purpose of taking a vote.[3] For these reasons it was frequently, even in official language, termed exercitus.[4] The use of this word, however, should not mislead us into supposing that the assembly was an actual army. Though Dionysius[5] represents the first meeting as armed — a mere supposition, apparently to account for its known military features — the fact is that the citizens carried weapons to none of the assemblies.[6] Strictly, too, the centuriate gathering was termed exercitus urbanus in contrast with the real army designated as exercitus armatus or classis procincta.[7] The facts thus far

[1] Laelius Felix, *Lib. ad. Muc.* in Gell. xv. 27. 5: "Centuriata autem comitia intra pomerium fieri nefas esse, quia exercitum extra urbem imperari oporteat, intra urbem imperari ius non sit."

[2] Dion. Hal. vii. 59. 3: Συνήει δὲ τὸ πλῆθος εἰς τὸ πρὸ τῆς πόλεως Ἄρειον πεδίον ὑπὸ λοχαγοῖς καὶ σημείοις τεταγμένον ὥσπερ ἐν πολέμῳ; p. 211. During the session Janiculum was occupied by a garrison, above which, in view of the Campus Martius, waved a flag; Dio Cass. xxxvii. 27; cf. Gell. xv. 27. 5.

[3] P. 104, 140 f., 244.

[4] *Comm. Consular.* in Varro, *L. L.* vi. 88; Livy xxxix. 15. 11; Laelius Felix, in Gell. xv. 27. 5; Fest. ep. 103; Macrob. *Sat.* i. 16. 15; Serv. *in Aen.* viii. 1. Mommsen, *Röm. Staatsr.* iii. 216, 294, n. 2, is of the opinion that the centuriate assembly was termed exercitus because it met for military exercise on the Campus Martius. But we have no evidence that the assembly ever took such exercise; in fact the drill of the proletarian mob would be hardly less ridiculous than that of the nonagenarians, both of whom had a right to vote in the assembly.

[5] IV. 84. 5.

[6] Mommsen, *Röm. Staatsr.* iii. 216 and n. 3.

[7] Fabius Pictor, *Ann.* i, in Gell. x. 15. 3 f.: "Dialem flaminem . . . religio est classem procinctam extra pomerium, id est, exercitum armatum, videre; idcirco rarenter flamen Dialis creatus consul est, cum bella consulibus mandabantur." There was no objection to this flamen's seeing the comitia centuriata, but the armed centuries it was not lawful for him to see. Cf. Varro, *L. L.* vi. 93: "Alia de causa hic magistratus (quaestor) non potest exercitum urbanum convocare; censor, consul, dictator, interrex potest, quod censor exercitum centuriato constituit quinquennalem,

adduced amply warrant us in refusing to consider the voting assembly an army.

But some imagine the censorial assembly for the assessment and lustration of the citizens to have been an army.[1] For this view they rely upon Dionysius,[2] who states that the people came armed to the first lustrum, and upon an uncertain passage from the Censoriae Tabulae, quoted by Varro,[3] which possibly speaks of the citizens in the lustral assembly as armati. If this word should be supplied in the passage, it might refer to an inspection of arms of the men of military age;[4] but that circumstance would by no means imply that all who attended the lustrum were armed or were liable to military duty. It is certain that as the census-taking had primary reference to property for the purpose of apportioning taxes and other burdens of citizenship, those only were summoned who were legally capable of holding property in their own name. The list excluded all the men "in patris aut avi potestate," however liable they were to military duty,[5] as well as the women and

cum lustrare et in urbem ad vexillum ducere debet." But the term exercitus urbanus sometimes denotes the body of men enlisted for military service from those who were ordinarily exempt; Livy xxii. 11. 9.

[1] Mommsen, *Röm. Staatsr.* iii. 265, supposes that in the original form of census-taking the citizens were so arranged in companies under their leaders as to constitute an army ready to be led against the enemy. But the only citation he offers (Dion. Hal. ii. 14, perhaps for iv. 22. 1; see n. below) has no bearing on the matter.

[2] IV. 22, 1: Κελεύσας τοὺς πολίτας ἅπαντας συνελθεῖν εἰς τὸ μέγιστον τῶν πρὸ τῆς πόλεως πεδίων ἔχοντας τὰ ὅπλα καὶ τάξας τοὺς θ'ἱππεῖς κατὰ τέλη καὶ τοὺς πεζοὺς ἐν φάλαγγι καὶ τοὺς ἐσταλμένους τὸν φιλικὸν ὁπλισμὸν ἐν τοῖς ἰδίοις ἑκάστους λόχοις καθαρμὸν αὐτῶν ἐποιήσατο.

[3] *L. L.* vi. 86: "Censor . . . praeconi sic imperato ut viros vocet. . . . Omnes quirites pedites armatos, privatosque curatores omnium tribuum, si quis pro se sive pro alio rationem dari volet, vocato in licium huc ad me" (Mommsen's reading, *Röm. Staatsr.* ii. 361, n. 6). Spengel reads, "Omnes quirites, (equites) pedites, magistratos privatosque, curatores," etc., in which armatos does not appear.

[4] Such an inspection by the censors, if it ever existed, must have fallen early into disuse (cf. Mommsen, ibid. iii. 397); but we could more reasonably suppose that the inspection of the arms and of the physical condition of the men always belonged to the officers who attended to the levy; Polyb. vi. 20.

[5] Cf. Livy xliii. 14. 8: "Censores edixerunt . . . qui in patris aut avi potestate essent, eorum nomina ad se ederentur." The father gave the census of his son; Fest. ep. 66: "Duicensus (census of two) dicebatur cum altero, id est cum filio census;" Dion. Hal. ix. 36. 3. The son was classed according to the census of the father; Livy xxiv. 11. 7.

children.[1] All such persons were reported by the father or guardian. It included, on the other hand, many who were exempt from military service on account of age, physical condition, or want of the necessary property qualification. Hence the censorial assembly could not have been identical with the army. Furthermore the centuriate assembly was not a basis for the levy.[2] On the contrary, the soldiers were enrolled directly from the tribes.[3] These facts warrant the conclusion that the relation between the army and the assembly must have been one of origin only; the organization of the assembly developed from that of the army, but at no time was the political assembly an army or the army otherwise than exceptionally or irregularly a political assembly. The truth is that an army regularly officiating as a political body would require for its explanation two revolutions — one to bring it into existence and another to abolish it; but of both cataclysms history is silent.

The growth of the political from the military organization was somewhat as follows. After the Romans had determined to use the centuries regularly as voting units for the decision of questions not purely military, they proceeded forthwith to extend the organization so as to include all the citizens. For this purpose the men of military age who were free from duty for the time being, or who had served the required number of campaigns — sixteen in the infantry or ten in the cavalry[4] — or who were exempt on account of bodily infirmity or for any other reason, had to be admitted to the junior centuries, thus materially increasing their number and making them unequal with one another. In a state, too, in which great reverence was paid to age the seniors could not be ignored. They were accordingly organized in a number of centuries (84) equal to that of the juniors — an arrangement which made one senior count as much as three juniors.[5] The mechanics who were liable to skilled

[1] Cic. *Leg.* iii. 3. 7; Dion. Hal. iv. 15. 6; v. 75. 3; Gell. iv. 20. 3 ff.

[2] Notwithstanding Genz, *Centuriatverf.* 11; Lange, *Röm. Alt.* i. 477.

[3] Polyb. vi. 20 ff. The Romans were of the opinion that the same principle held for the earliest times; Varro, *L. L.* v. 89; Dion. Hal. iv. 14; cf. Soltau, *Altröm. Volksversamml.* 337.

[4] Polyb. vi. 19. 2.

[5] The five classes contained accordingly 80, 20, 20, 20, and 28 centuries respectively; cf. p. 66 f., 77; see also table on p. 210. A great difference exists between Livy and Dionysius, on the one hand, and Cicero, on the other, as to the number of

service in the army [1] were then grouped for voting purposes in two centuries, that of the smiths and that of the carpenters,[2] based on the two guilds in which these artisans were already organized.[3] Authorities differ as to the classes with which they were associated. Livy[4] adds them to the first class. Cicero,[5] too, places a century of carpenters with that group, making no mention of the smiths, whereas Dionysius[6] assigns both centuries of mechanics to the second class. The explanation of the difference of opinion seems to be that information as to this point was not contained in the censorial document from which the annalist (Fabius Pictor) drew his knowledge of the earlier comitia centuriata; the Romans knew only by tradition that the industrial centuries were associated in the assembly with one of the higher classes. The weight of authority inclines in favor of the first class, and the reason for the respectable place occupied by the mechanics is the high value placed on their service in early time.[7] In like manner the trumpeters (tubicines, liticines) and the hornblowers (cornicines) were grouped each in a century for voting in the comitia,[8] also on

centuries in the highest class. Cicero (*Rep.* ii. 22. 39: "Nunc rationem videtis esse talem, ut equitum centuriae cum sex suffragiis et prima classis addita centuria, quae ad summum usum urbis fabris tignariis est data, LXXXVIIII centurias habebat") states that the eighteen centuries of knights, the centuries of the first class, and one century of mechanics amounted to eighty-nine, which would give but seventy to the first class. The most satisfactory explanation of this difficulty seems to be that Cicero, while professing to describe the earlier centuriate system, had in mind a formative stage of the new organization, in which the first class comprised seventy centuries; p. 67, 215, n. 2. On the number in the fifth class, see p. 66, 77, 208.

[1] P. 68.

[2] The two are mentioned by Livy i. 43. 3 and Dion. Hal. iv. 17. 3; vii. 59. 4. Pliny, *N. H.* xxxiv. 1. 1, speaks of a guild of coppersmiths, and Plut. *Num.* 17, refers to the same guild and to that of the carpenters, ascribing both to Numa as founder. Cicero, *Rep.* ii. 22. 39; *Orat.* 46. 156, mentions only the century of carpenters. Placing this century with the first class, he either overlooks that of the smiths or wishes to reckon it with the second class (cf. Huschke, *Verf. des Serv.* 153). As he reckons the total number of centuries at one hundred and ninety-three, he has allowed for both.

[3] Plut. *Num.* 17; also n. above.

[4] I. 43. 3.

[5] *Rep.* ii. 22. 39; cf. n. 2 above.

[6] IV. 17. 3.

[7] Cf. Smith, *Röm. Timokr.* 91 f. with citations.

[8] Cic. *Rep.* ii. 22. 40; Livy i. 43. 7; Dion. Hal. iv. 17. 3 f.; vii. 59. 5; cf. Varro, *L. L.* v. 91; Cato, in Gell. xx. 2.

the basis of their guild organizations.[1] The accensi velati, who as we are informed followed the army in civilian dress and without weapons,[2] also received a centuriate organization. As to the number of centuries belonging to them opinion has differed. Some, formerly including Mommsen,[3] have assumed two. Livy,[4] however, gives but one century; Cicero[5] seems to have only one in mind; and in imperial time there was a single collegium, or century, of accensi,[6] probably a survival of the old political group. These considerations led Mommsen to abandon his former view, to assume instead a single century of the kind; and recent writers are inclined to follow him.[7] Lowest in rank of the supernumerary centuries was that of the proletarians.[8] The government so designated those citizens who owned no land,[9] and hence were poor. They were exempt from military duty, excepting in so far as they served with arms furnished by the state.[10] Though few in the beginning, their number gradually increased till in the time of Dionysius[11] it exceeded all the five classes together. At some time in the early history of the comitia centuriata they were formed into a century and given one vote,[12] which was not counted with any class but was reported

[1] Plut. *Num.* 17, speaks of only one guild of musicians, the pipers. But the cornicines formed a guild in imperial times; *CIL.* vi. 524. The two centuries were united in the collegium aeneatorum; Fest. ep. 20; *CIL.* vi. 10220 f.; Domazewski, in Pauly-Wissowa, *Real-Encycl.* iii. 1954. [2] P. 68, 80.

[3] *Röm. Trib.* 137, accepted by Genz, *Centurienverf.* 3, 8; Soltau, *Altröm. Volksversamml.* 254, 317, 520, n. 1. Huschke, *Verf. d. Serv.* 172, assumes ten and includes them in the fifth class. Lange, *Röm. Alt.* i. 471, supposes the accensi to have included the entire fifth class, which in his opinion was not instituted till the beginning of the republic. [4] I. 43. 7.

[5] *Rep.* ii. 22. 40: "Quin etiam accensis velatis, liticinibus, cornicinibus, proletariis."

[6] *CIL.* vi. 9219: "Praef(ectus) c(enturiae) a(ccensorum) v(elatorum)"; cf. Mommsen, *Röm. Staatsr.* iii. p. xi, n. 1; Ulpian, *Vat. Frag.* 138, mentions the privileges of this century. A decuria of the accensi velati is referred to by *CIL.* vi. 1973; cf. Kubitschek, in Pauly-Wissowa, *Real-Encycl.* i. 136.

[7] Cf. Mommsen, *Röm. Staatsr.* iii. 282; Kubitschek, in Pauly-Wissowa, *Real-Encycl.* i. 135 ff.; Domazewski, ibid. iii. 1953 f. [8] P. 68.

[9] *XII Tables*, in Gell. xvi. 10. 5: "Adsiduo vindex adsiduus esto. Proletario iam civi, cui, quis volet, vindex esto."

[10] Livy i. 43. 8; Dion. Hal. iv. 18. 2; Ennius, in Gell. xvi. 10. 1. [11] IV. 18. 2.

[12] That there was a proletarian century, besides the accensi velati, in the comitia centuriata is proved by Livy i. 43. 8; Dion. Hal. iv. 18. 2; Cic. *Rep.* ii. 22. 40. Mommsen's attempt (*Röm. Staatsr.* iii. 237 f., 285 f.) to rule this century out of

after all the others. Dionysius[1] wrongly speaks of it as a sixth class. The existence of this century is due to the principle that no one should be excluded from the right to vote on account of poverty.[2]

Six supernumerary centuries have now been mentioned and the place of three — the two industrial and the one proletarian — in the voting system has been considered. With reference to the others Dionysius assigns the musicians to the fourth class, Livy to the fifth. The settlement of this question is aided by an examination into the total number of comitial centuries of the fifth class. It is given as thirty by the sources.[3] Assuming this to be the correct number and adding to the sum of centuries in the five classes (170) the six supernumerary centuries and the eighteen centuries of knights to be considered below, we should have in all a hundred and ninety-four, which would be one too many. In an earlier chapter, however, the conclusion was reached that there were but fourteen military centuries in the fifth class.[4] Two of the thirty centuries assigned to that class in the comitia centuriata must therefore have been in fact supernumerary. If one was the accensi, what was the other? Most probably it was the century of the tardy described by Festus,[5] made up at each meeting of those who came too late to vote in their own classes. Obviously all writers who apply the discriptio centuriarum to the army view this century, as well as that of the proletarians, with suspicion.[6] The two centuries of the accensi and the tardy should be included among, not added to, the thirty of the fifth class.[7] Having reached this result, it

existence has failed, notwithstanding the approval of some recent writers, as Domazewski, in Pauly-Wissowa, *Real-Encycl.* iii. 1953. Cf. Kübler, ibid. iii. 1521 ff.

[1] IV. 17. 2; vii. 59. 3.

[2] Cf. Livy i. 43. 10.

[3] Cf. p. 66, 77, n. 2.

[4] P. 77 and n. 2.

[5] 177. 21: "'Niquis scivit' centuria est, quae dicitur a Ser. Tullio rege constituta, in qua liceret ei suffragium ferre, qui non tulisset in sua, nequis civis suffragii iure privaretur. . . . Sed in ea centuria, neque censetur quisquam, neque centurio praeficitur, neque centurialis potest esse, quia nemo certus est eius centuriae. Est autem ni quis scivit nisi quis scivit."

[6] As does Mommsen, *Röm. Staatsr.* iii. 285 f.

[7] This view accords best with the words of Livy i. 43. 7: "In his accensi, cornicines tubicinesque, in tres centurias distributi" (they were reckoned among the thirty).

might seem advisable for us to assume no further supernumerary centuries for the fifth class, but to follow the authority of Dionysius in assigning the musicians to the fourth. Or as the trumpeters preceded the hornblowers in rank, it might be plausibly argued that the former belonged to the fourth and the latter to the fifth. In this way a compromise could be effected between Livy and Dionysius, and Livy's three supernumerary centuries of the fifth class could be explained. Absolute certainty is unattainable. The notion of Dionysius that one century of musicians voted with the seniors, the other with the juniors, and so of the mechanics,[1] is erroneous; for the seniors did not vote separately from the juniors.

In the centuriate assembly each of the six tribal troops of knights[2] had one vote, and was called, therefore, a suffragium. As the term centuria had not previously applied to these groups, it was for a time withheld from them in the comitia, the six divisions being known simply as the sex suffragia.[3] Afterward as new voting groups were added to the equites they came to be called centuries, and thence the term extended to the old.[4] The centuriate organization of the comitia did not demand the creation of suffragia seniorum, to correspond with the centuriae seniorum of the infantry, perhaps because the six votes in the comitia centuriata adequately represented the whole number of patricians. As the equites originally provided their own horses,[5] they held their rank for life, not merely through the period of service. After the state had undertaken to furnish money for the purchase and keeping of the horses,[6] the eques retained his public horse, and consequently his membership in an equestrian century, long after his retirement from active duty.[7] The increase in the number of equestrian votes was owing to the

[1] Accepted by Huschke, *Verf. d. Serv.* 152, but rejected by Mommsen, *Röm. Staatsr.* iii. 283, n. 1.

[2] P. 7, 62, 74 ff. 93, 96.

[3] Cic. *Rep.* ii. 22. 39: "Equitum centuriae cum sex suffragiis"; Fest. 334. 29. Cic. *Phil.* ii. 33. 82, is uncertain.

[4] Cic. *Rep.* ii. 22. 39 (n. above); Livy i. 36. 7; 43. 9.

[5] P. 62, 93.

[6] P. 93.

[7] L. Scipio Asiagenus retained his public horse till, six years after his consulship, he was deprived of it by Cato the censor; Plut. *Cat. Mai.* 18; Livy xxxix. 44. 1. Both censors of the year 204 had public horses; Livy xxix. 37. 8. The senators were equites and voted in the equestrian centuries as late as 129; Cic. *Rep.* iv. 2. 2; cf. Gerathewohl, *Reiter und Rittercent.* 77 and n. 2 f.

participation of plebeians in the mounted service.[1] From them twelve equestrian centuries were formed for the centuriate assembly, and added to the six groups already existing. This increase probably came about in the course of the fourth century, accompanying or following the enlargement of the infantry from two to four legions.[2] Thus the total number of one hundred and ninety-three centuries could not have been reached till shortly before 269.

The foregoing discussion has made it evident that from the time when the comitia centuriata came into being, there were two centuriate organizations; (1) the military, which continued as before till it changed to the manipular formation,[3] (2) the political, which developed from the military but which was at no time identical with it.

DISCRIPTIO CENTURIARUM OF THE COMITIA CENTURIATA

Old centuries of knights	6
New centuries of knights	12

CLASSES	JUNIOR CENTURIES	SENIOR CENTURIES	RATINGS IN ASSES ACCORDING TO LIVY
I	40 + 2 of artisans	40	100,000
II	10	10	75,000
III	10	10	50,000
IV	10 + 2 of musicians	10	25,000
V	14 + 1 of accensi + 1 of the tardy	14	11,000

Below the classes:
1 century of proletarians

SUMMARY

Knights	18
Seniors and juniors	168
Supernumerary	7
Total	193

[1] P. 94. [2] P. 96.

[3] Livy viii. 8, while describing the manipular arrangement under the year 340, assigns the beginning of it to the time of Camillus, considering it due to the introduction of pay; Plut. *Cam.* 40 (for change of armor at time of Camillus); cf. Soltau, *Altröm. Volksversamml.* 278; Marquardt, *Röm. Staatsv.* ii. 332 f.; Delbrück, *Gesch. d. Kriegsk.* i. 235.

Before the reform this assembly met in military array with banners displayed, each company under its centurion.[1] The voting was oral. Probably it was at first by acclamation; if so the suggestion of individual voting, as we find it in historical time, must have come from the orderly military array, which offered itself conveniently for the purpose.[2] The centurions may originally have served as rogatores, to collect and report the votes.[3] Each century cast a single vote, which in historical time the majority of its members decided.[4] The voting proceeded according to classes; the equites were asked first, hence their centuries were termed prerogative (praerogativae), then the eighty centuries of the first class. If the votes of these two groups were unanimous, they decided the question at issue; as ninety-seven was a majority, they had one to spare from their total number. If they disagreed, the second class was called and then the third and so on to the proletarian century. But the voting ceased as soon as a majority was reached, which was often with the first class; and it rarely happened that the proletarians were called on to decide the issue.[5] The announcement of the prerogative votes greatly influenced the action of those which followed.[6]

II. *The Reform*

The study of the centuriate assembly begun earlier in the volume[7] and continued in the preceding part of this chapter shows it gradually developing its organization during the fifth and fourth centuries B.C. The main line of progress has been traced though details are unknown. The growth of popular rights in the latter half of the fourth century gave a great impetus to the activity of the assemblies in general, as is manifested in the Genucian, Publilian, and Hortensian legislation.

[1] Dion. Hal. vii. 59. 3 (p. 203, n. 2). There seems to be no reason for doubting this statement; cf. Herzog, *Röm. Staatsverf.* i. 1100. [2] P. 157 b.

[3] Lange, *Röm. Alt.* i. 563. His citations, however (Fest. 177. 27; Cic. *Orat.* ii. 64. 260), do not prove the point; Herzog, ibid. [4] Dion. Hal. iv. 21. 1; x. 17.

[5] Livy i. 43. 11; Dion. Hal. iv. 20. 3–5; vii. 59. 3–8; x. 17. 3. On the prerogative equestrian centuries, see Livy i. 43. 8; v. 18. 1: "Praerogativa . . . creant" (corrupt text); x. 22. 1: "Praerogativae et primo vocatae centuriae . . . dicebant"; Fest. 249. 7.

[6] Cic. *Planc.* 20. 49; *Q. Fr.* ii. 14. 4; *Div.* i. 45. 103; Fest. ibid. [7] Ch. iv.

In 312 when the change was made in the appraisements from land to money, many aerarii who had voted with the proletarians must have been advanced to the higher classes.[1] This step toward the democratization of the comitia centuriata, following upon the reduction of the patrum auctoritas to a mere formality, could not help adding new energy to the institution, leading to further changes in a popular direction. The class ratings which are known to history were established no earlier than 269.[2] Two other more important changes, which can be but approximately dated, must now be considered in detail. They are (1) the abolition of the equestrian prerogative and the introduction of the custom of drawing by lot a prerogative century from the first class on each occasion before the voting began; (2) the division of the citizens into classes and centuries within the several tribes. These two innovations are commonly grouped together under the name of the "reform." As they have no necessary connection with one another, they need not have been simultaneous. Livy's narrative of the happenings of 396[3] and of 383[4] seems to imply that they had been introduced before these dates.[5] But the passages here referred to

[1] P. 64, 86 f. [2] P. 86 f.

[3] V. 18. 1 f.; "P. Licinium Calvum praerogativa tribunum militum non petentem creant . . . omnesque deinceps ex collegio eiusdem anni refici apparebat. . . . Qui priusquam renuntiarentur iure vocatis tribubus. . . . Calvus ita verba fecit." We might amend this evidently corrupt passage either by changing praerogativa to the plural, as do Müller (2d ed. 1888) and Weissenborn (8th ed. 1885), thus making it refer to the equestrian centuriae. At the same time we might read iis revocatis (scil. praerogativis). The passage would then apply to the Servian arrangement. Or we could bring it to the support of the reformed order by reading creat (cf. Madvig). The preferable interpretation of the qui priusquam . . . tribubus clause seems to be "Before they could be declared elected on the official reports from the tribes," the official reports being counted tribe by tribe, as will hereafter appear; p. 225. See also on this passage, Plüss, *Centurienverf.* 10 ff.; Lange, *Röm. Alt.* ii. 496. Here, as often elsewhere, Ullrich, *Centuriatcom.* 14, is wrong. But it is impossible to prove or to disprove anything by the emendation of such a passage.

[4] VI. 21. 5: "Omnes tribus bellum iusserunt." As the tribal assembly did not declare war, this passage must refer to the reformed comitia (Lange, ibid.; Plüss, ibid. 13), unless omnes tribus is carelessly used to designate the unanimous vote of the populus Romanus. The assembly tributim mentioned by Livy vii. 16. 7 for the year 357 was tribal, not centuriate as Ullrich, ibid. 15, supposes.

[5] In fact some scholars have assigned the reform to the decemvirs, 451; cf. Peter, *Epoch. d. Verfassungsgesch.* 75; Soltau, *Altröm. Volksversamml.* 361 ff.

are uncertain; and at all events they belong to a period in which the centuries may still have been closely connected with the tribes.[1] But should they be so interpreted as to apply to the reformed centuriate assembly, they might still be looked upon as historical anticipations for the reason that Livy's[2] account of the year 296 has reference to a feature of the old organization. This disposition of the three passages is supported by the following consideration. Had the reform been introduced much earlier than 269, the annalists would have assigned it to Servius Tullius, just as they assigned to him thirty tribes (reached in 318), all thirty-five tribes (reached in 241), and the census ratings in the sextantarian asses (established in or after 269);[3] and in that case all memory of the original Servian system would have been lost. The circumstance that we are acquainted with it in some detail is proof of its survival into the third century B.C. In fact Livy's[4] chief reference to the reform indicates that it was completed, if not undertaken, after the number of tribes had been brought up to thirty-five (241). On the other hand it came before the opening of his third decade (218), which takes the new arrangement for granted.[5] The contention is often made that Livy must have given an account of the reform in his second decade (292–219) now lost; and there is a universal agreement that the reform was brought about not by statute, but by arbitrary censorial disposition.[6] The censor commonly assumed to be the author of the change is either Fabius Buteo, 241, or Flaminius, 220.[7] Against the latter may

[1] P. 77 f., 214.

[2] X. 22. 1: "Eumque et praerogativae et primo vocatae omnes centuriae." Praerogativae refers to the equestrian centuriae and hence to the Servian organization. It is hazardous, however, to make so much depend on a single letter; should final *e* be dropped from this adjective, the sentence would still read correctly.

[3] P. 57 f., 66 f., 86 f. [4] I. 43. 12.

[5] Cf. xxiv. 7. 12 (215 B.C.): "Eo die cum sors praerogativae Aniensi iuniorum exisset"; 9. 3: "Praerogativae suffragium iniit . . . eosdem consules ceterae centuriae . . . dixerunt"; xxvi. 22. 2 f.; xxvii. 6. 3.

[6] Livy xl. 51 is evidence that the censors had power to make changes as extensive as these.

[7] Mommsen, *Röm. Trib.* 108, preferred Fabius, and his view has been accepted by Lange, *Röm. Alt.* ii. 499; Herzog, *Röm. Staatsverf.* i. 326; Kübler, in Pauly-Wissowa, *Real-Encycl.* iii. 1956; Le Tellier, *Organ. cent.* 75; Willems, *Droit public Röm.* 93; Karlowa, *Röm. Rechtsgesch.* i. 384; and others. But in his *Staatsr.* iii.

be urged the silence of Polybius[1] and Livy,[2] who in speaking at length of his opposition to the nobles makes no reference to this reform. In favor of Fabius it may be said that in 241 the full number of tribes was completed; and the name of the thirty-fifth, Quirina, corresponding to Romilia, the first rural tribe, suggests that the Romans intended to create no more. In naming the last tribe the censors seem to have had in mind the completion of the new system, to each component part of which they apparently guaranteed a definite share of political power, which would have been impaired by the further creation of tribes.[3]

A little reflection, however, will convince us of the impossibility of assigning the reform to any one censor or to a definite date. Livy could not have made much of it in the lost part of his history without leaving some trace in the epitome, which mentions far more trivial matters.[4] The only explanation of the epitomator's silence is that the reform was so gradual as to escape marked attention. This view is supported by a strict interpretation of Livy,[5] who supposes the change to have come about naturally with the increase in the number of tribes, and of Dionysius,[6] who ascribes the innovation, or a part of it, to no

254, n. 4, 270, n. 3, following Göttling, *Gesch. d. röm. Staatsverf.* 383, he changes his preference to Flaminius on the ground that the conflict between the patricians and the plebeians continued to the war with Hannibal (Sall. *Hist.* i. 9. 11), ending, as he supposes, in the opening of the six patrician centuries of knights to the plebeians — a change which he connects with the reform under discussion. His reasoning as to the date is not cogent, and is outweighed by the consideration given in the text.

[1] II. 21.

[2] XXI. 63; cf. Kübler, in Pauly-Wissowa, *Real-Encycl.* iii. 1956.

[3] Lange, *Röm. Alt.* ii. 499; Plüss, *Centurienverf.* 10; Le Tellier, *Organ. cent.* 73 ff.

[4] Guiraud, in *Rev. hist.* xvii (1881). 7.

[5] I. 43. 12: "Nec mirari oportet hunc ordinem, qui nunc est post expletas quinque et triginta tribus duplicato earum numero centuriis iuniorum seniorumque, ad institutam ab Serv. Tullio summam non convenire" (Nor need we be surprised that the arrangement as it now exists after the tribes have been increased to thirty-five, their number being doubled in the centuries of juniors and seniors, does not agree with the total number instituted by Servius Tullius).

[6] IV. 21. 3: Οὗτος ὁ κόσμος τοῦ πολιτεύματος ἐπὶ πολλὰς διέμεινε γενεὰς φυλαττόμενος ὑπὸ Ῥωμαίων· ἐν δὲ τοῖς καθ' ἡμᾶς κεκίνηται χρόνοις καὶ μεταβέβληκεν εἰς τὸ δημοτικώτερον, ἀνάγκαις τισὶ βιασθεὶς ἰσχυραῖς, οὐ τῶν λόχων καταλυθέντων, ἀλλὰ τῆς κρίσεως (or κλήσεως) αὐτῶν οὐκέτι τὴν ἀρχαίαν ἀκρίβειαν φυλαττούσης, ὡς ἔγνων ταῖς ἀρχαιρεσίαις αὐτῶν πολλάκις παρών. (After this arrangement had continued many generations, carefully preserved by the Romans, it has assumed in our time a

individual but to "certain powerful forces." A conclusion as to the date of the reform, to be acceptable, must satisfy the conditions above mentioned. In earlier time, when there was a single classis, the centuries were made up within the tribes; but this simple system was rendered impossible by the increase in the number of classes.[1] For convenience of administration the censors must soon after this enlargement have begun an effort to reduce the discord to harmony. One class may have been brought into agreement with the tribes more readily than another, and thus the readaptation may have extended through many lustra. The number of centuries probably did not long remain at one hundred and ninety-three. It may have received its first increase above that sum in 304, for instance, the date to which Niebuhr[2] assigns the reform. The process may have been far advanced in 241, the date preferred by a majority of scholars, and completed by Flaminius in 220.[3] The abolition of the equestrian prerogative may likewise have been gradual; it may have been retained in one class of comitial acts — elections or legislation, for instance — longer than in another. The conclusion that the changes were gradually introduced in the period from 304 to 220 would best explain all the known facts.[4]

As no description of the reformed organization has come down to us, we are obliged to reconstruct it from the scant

more democratic character, driven into this new course by certain powerful forces. The centuries were not abolished, but the decision of their votes has lost its former carefulness — or we may read, the calling of the centuries no longer retains its precise order. This fact, he tells us, he himself often noticed when present at elections.)

If *κρίσεως*, supported by most MSS., is retained, it should refer to the equalization of power among the classes; *κλήσεως* would probably mean that the prerogative century was now drawn by lot.

[1] P. 77 f.

[2] *Röm. Gesch.* iii. 374 ff.

It is not improbable that the first step was the reduction of the first class to seventy centuries, the ten centuries deducted being at the same time added to the lower classes. This view will explain Cic. *Rep.* ii. 22. 39, which otherwise must be considered a mistake; p. 67, 205, n. 5.

[3] P. 213, n. 5.

[4] Ihne, *Hist. of Rome*, iv. 12, concludes that the change was gradual. The line of development suggested by Plüss, *Centurienverf.*, however, is ill supported by the evidence. Guiraud, *Rev. hist.* xvii (1881). 1 ff., also accepts the view of a gradual reform but minimizes its importance.

references of various writers. It is to be noted first that the five classes continued in the new system.[1] They were still based on the census,[2] and were called to vote in their order as before.[3] The distinction between juniors and seniors was retained;[4] and as these comitia were still called centuriata, the centuries necessarily continued as the voting units.[5] But the

[1] The citations below refer to a plurality of classes for the period following the reform, without mentioning a definite number; Sall. *Iug.* 86; Cic. *Rep.* iv. 2. 2; *Flacc.* 7. 15; *Red. ad Quir.* 7. 17; Symmachus, *Pro Patre*, 7 (Seeck); Auson. *Grat. Act.* iii. 13; ix. 44 (Peiper); p. 287, 293 (Bip.). In his speech for the Voconian law, 169, the elder Cato, in Gell. vi. 13. 3, referred to the distinction between the classici and those who were infra classem, from which we may conclude that the distinction existed in his time. The agrarian law of 111 (*CIL.* i. 200. 37) mentions the first class; also Livy xliii. 16. 14. The first and second are spoken of by Cic. *Phil.* ii. 33. 82. Ullrich's view (*Centuriatcom.*), resting on these passages, is that there were but two classes, one of seniors another of juniors. Besides involving many impossibilities, it is refuted by the frequent references to the continuance of the census as an element in the system (see note below) and by the occasional mention of the five classes. The latter number for the time of C. Gracchus is given by Pseud. Sall. *Rep. Ord.* 2. 8. This work, though late, is generally considered good authority; cf. Greenidge, *Hist. of Rome*, i. 237 f. Five are mentioned also by Gell. vi (vii). 13. 1; Serv. *in Aen.* vii. 716; Arnob. *Adv. Nat.* ii. 67, with no definite reference to a particular period. Cicero's allusion (*Acad. Pr.* ii. 23. 73) to the fifth class implies at least that the five classes were then fresh in the memory. The mention of an amplissimus census for the time of Cicero by Ascon. *in Pis.* 16, proves the existence of more than two classes at the time. These citations, together with the fact that no other definite number but five is ever spoken of by the ancient writers, must lead to the conclusion that there was no change.

[2] To the time of Marius the soldiers were still drawn from the census classes; Polyb. vi. 19. 2; Sall. *Iug.* 86. The first class was distinguished from the rest by its armor, Polyb. vi. 23. 15. That the political classes likewise rested on the census is proved by Cic. *Leg.* iii. 3. 7; 19. 44; Gell. vi (vii). 13; xv. 27. 5; Ascon. *in Pis.* 16. The agrarian law of 111 (*CIL.* i. 200. 37) implies a property qualification of the class mentioned (note above). These citations dispose of the hypothesis of Plüss, *Centurienverf.* 36 ff., 80, which represents the classes of this period as consisting of groups of tribes resting partly on the census but mainly on differences of rank.

[3] Cic. *Phil.* ii. 33. 82; Livy xliii. 16. 14; Pseud. Sall. *Rep. Ord.* 2. 8; Val. Max. vi. 5. 3; (Aurel. Vict.) *Vir. Ill.* 57. 3.

[4] Livy i. 43. 12; xxiv. 7. 12; xxvi. 22. 2 f.; xxvii. 6. 3 (p. 213, n. 5 above); Cic. *Rep.* iv. 2. 2; *Verr.* II. v. 15. 38: "Qui (praeco) te totiens seniorum iuniorumque centuriis illo honore (praetorship) adfici pronuntiavit"; *Har. Resp.* 6. 11; *Leg.* iii. 3. 7; Horace, *Ars Poet.* 341: "Centuriae seniorum agitant expertia frugis."

[5] Varro, *L. L.* vii. 42; Cic. *Flacc.* 7. 15; *Sull.* 32. 91; *Tog. Cand.* in Ascon. 85; *Red. in Sen.* 11. 27; *Imp. Pomp.* 1. 2; *Brut.* 67. 237; *Orat.* ii. 64. 260; Ascon. 16, 95; Pseud. Sall. *Rep. Ord.* 2. 8; Livy i. 43. 12 f.; xxvi. 18. 9; 22. 4, 8, 10, 13; xxvii. 21. 4; xxviii. 38. 6; xxix. 22. 9; xxxi. 6. 3; 7. 1; xxxvii. 47. 7; xliii. 16. 14, 16; Dion. Hal. iv. 21. 3; et passim.

reform brought them into direct relation with the tribes, which now served as a basis for the division into centuries and for their distribution according to age and class. On this point Livy [1] remarks, "We ought not to wonder that the arrangement which now exists after the tribes have been increased to thirty-five, their number being doubled in the centuries of juniors and seniors, does not agree with the total number instituted by Servius Tullius; for he divided the city into four parts, . . . which he called tribes. . . . Nor did those tribes have any relation to the distribution and number of the centuries." From this passage we may infer (1) that in the reformed assembly the number and distribution of the centuries depended closely upon the tribes — a conclusion supported by other citations to be given hereafter, (2) that the number of centuries was changed, although we are not distinctly informed whether by diminution or increase. According to one interpretation the number of tribes was doubled by the number of centuries of juniors and seniors, and there were therefore seventy of these centuries, thirty-five juniors and as many seniors, each century forming a half tribe. This view is supported by passages in which the century bears the name of the tribe, as Aniensis iuniorum,[2] Voturia iuniorum,[3] Galeria iuniorum,[4] as well as by those which in a more general way refer to voting or the announcement of the votes by or according to tribes in the centuriate assembly.[5] It accords perfectly with other evidence that

[1] I. 43. 12 f. "Nec mirari oportet hunc ordinem, qui nunc est post expletas quinque et triginta tribus duplicato earum numero centuriis iuniorum seniorumque, ad institutam ab Servio Tullio summam non convenire. Quadrifariam enim urbe divisa . . . partes eas tribus appellavit . . . neque eae tribus ad centuriarum distributionem numerumque quicquam pertinuere."

[2] Livy xxiv. 7. 12. [3] Livy xxvi. 22. 2 f. [4] Livy xxvii. 6. 3.

[5] Voting or the announcement of the votes according to tribes is indicated by Polyb. vi. 14. 7: Τοῖς γὰρ θανάτου κρινομένοις, ἐπὰν καταδικάζωνται δίδωσι τὴν ἐξουσίαν τὸ παρ' αὐτοῖς ἔθος ἀπαλλάττεσθαι φανερῶς, κἂν ἔτι μία λείπηται φυλὴ τῶν ἐπικυρουσῶν τὴν κρίσιν ἀψηφόρητος, ἑκούσιον ἑαυτοῦ καταγνόντα φυγαδείαν. (To those who are on trial for life, while the vote of condemnation is being taken, even if a single tribe of those whose suffrages are needed to ratify the sentence has not voted, the Roman custom grants permission to depart openly, condemning themselves to voluntary exile.) This procedure must have been in the comitia centuriata, and hence the votes of the centuries must have been taken or announced by tribes; cf. Klebs, in *Zeitschr. d. Savignyst.* xii (1892). 220; Plüss, *Centurienverf.* 14. See

the century was an integral part of the tribe.[1] This is the view adopted by Niebuhr.[2] It is open, however, to the fatal objection of abolishing the classes, which in fact continued through the republic, as has already been shown.[3] He does indeed allow for a first class comprising the country tribes and a second class made up of the others;[4] but this hypothesis is

also Cic. *Leg. Agr.* ii. 2. 4: "Meis comitiis non tabellam vindicem tacitae libertatis, sed vocem [unam] prae vobis indicem vestrarum erga me voluntatum ac studiorum tulistis. Itaque me non extrema tribus (not diribitio) suffragiorum, sed primi illi vestri concursus, neque singulae voces praeconum, sed una vox universi populi Romani consulem declaravit." The MSS. have tribus and there is nothing against it, though Müller, following Richter, has adopted diribitio for the Teubner text, 1896. The meaning is "In my election you offered not merely the ballot, the vindication of your silent liberty, but also your unanimous voice as evidence of your good will to me and of your eagerness in my behalf. Hence it was not the last tribal group of votes but your first coming together, not the single announcements of the criers but the unanimous voice of the entire Roman people which declared me consul." From this passage we may infer (1) that the votes were cast or announced by tribes, (2) that the tribe cast more than one vote, (3) that the result was sometimes known before the last tribe was reached. Cf. further Cic. *Phil.* vi. 5. 12; 6. 16; xi. 8. 18; Livy v. 18. 2; vi. 21. 5; viii. 37. 12; xxix. 37. 13; ep. xlix; Oros. v. 7. 1; Lucan, *Phars.* v. 391 ff.; Plut. *Cat. Min.* 42.

[1] Cic. *Planc.* 20. 49: "Unius tribus pars" (i.e. the prerogative century); Pseudacr. Schol. Cruq. ad Hor. *Poet.* 341: "Singulae tribus certas habebant centurias seniorum et iuniorum"; Livy i. 43. 12 f. implies that the number of centuries was a multiple of the number of tribes, in other words that the century was an integral part of the tribe; cf. Q. Cic. *Petit.* 5. 17 f.; 8. 32; Mommsen, *Röm. Trib.* 74. The most convincing evidence is that of inscriptions of the imperial period (p. 220) which prove the urban tribes to have comprised each an integral number of centuries. Mommsen, *Röm. Staatsr.* iii. 274, has therefore failed in his attempt to limit to the first class the division of the tribes into centuries.

[2] *Röm. Gesch.* iii. 382 f., followed by Plüss, *Centurienverf.* 23 ff. Niebuhr places the change in 304, when there were but thirty-one tribes, which would give for that date but sixty-two half-tribe centuries.

[3] P. 216.

[4] Niebuhr, ibid. His authorities for the two classes are Livy xliii. 16. 14: "Cum ex duodecim centuriis equitum octo censorem condemnassent multaeque aliae primae classis"; Cic. *Phil.* ii. 33. 82: "Prima classis vocatur, renuntiatur; deinde, ita ut adsolet, suffragia; tum secunda classis vocatur; quae omnia sunt citius facta, quam dixi. Confecto negotio bonus augur . . . alio die inquit"; cf. p. 113. In the Livian citation, however, the mention of only the first class affords no hint as to the number of classes to follow; and the keen analysis of the Ciceronian passage made by Huschke, *Verf. des Serv.* 615 and n. 8, proves confecto negotio to signify not necessarily that the voting had been finished, but rather that the comitia had advanced so far as to preclude the obnuntiatio. It should be served before the assembly convened, not after the meeting began ("Non comitiis habitis, sed priusquam habeantur"; § 81). Confecto negotio, equivalent to comitiis habitis, is the negative of

overthrown by those citations which imply the continuance of all five classes,[1] as well as by those which make the census an element of the later organization.[2] Huschke,[3] who places the reform in the earliest times of the republic, adopts Niebuhr's view as to the number of centuries; but maintaining the continuance of the five classes,[4] he considers them to be groups of tribes, the seventeen old rural tribes being distributed as follows: in the first class eight, in the second, third, and fourth respectively two, in the fifth three.[5] But bearing in mind that these tribes were primarily local, we cannot at the same time regard them as census groups without ascribing to them an impossibly artificial character. For this reason the theory of Huschke should be rejected. To avoid this difficulty, while retaining the classes, the assumption has been made that the classes were subdivisions of the century, in other words that each century contained men of every class. This view is invalidated by the fact that the centuries continued to be divisions of the classes, which were still called to vote in their order.[6]

The assumption of a diminution in number having proved untenable, the conclusion is that there was an increase.[7] In view of the facts (1) that the reformed organization rested on a tribal basis,[8] (2) that the centuries were divisions not only of the tribes[9] but also of the classes,[10] (3) that the tribes could not have been divisions of the classes,[11] it is necessary to conclude that the classes were themselves divisions of the tribes with the centuries

priusquam habeantur. This interpretation deprives the theory of two classes, held by Niebuhr, Ullrich, and others, of its only support.

[1] P. 216, n. 1. [2] P. 216, n. 2. [3] *Verf. des Serv.* 623. [4] Ibid. 617 ff.

[5] Ibid. 634. Similar is the view of Plüss, *Centurienverf.* 36 ff., 80, that for the period 179–86 the classes were groups of tribes based partly on the census and partly on social rank.

[6] P. 216, n. 3. The long-known hypothesis here mentioned was sufficiently refuted by Huschke, ibid. 619 ff., but has been more recently revived by Madvig, *Röm. Staat.* i. 117 ff., who, however, so develops it as to make the five classes voting divisions of the century. This notion is controverted by Genz, *Centuriatcom. nach. der Ref.*, and defended without success by Gerathewohl, *Reit. und Rittercent.* 90 f.

[7] This result is in fact suggested by the passage in Livy 1. 43. 12 f. (p. 217, n. 1); it is not to be wondered at that an increase in the tribes should bring about an increase in the centuries — a diminution in the centuries could not be spoken of in the same way. [8] P. 217. [9] P. 218, n. 1. [10] P. 216, n. 3. [11] ¶ above.

as subdivisions. In other words, the work of organization took place within the tribe: the members of a tribe were first divided into five classes according to their wealth; within each class the men were grouped on the basis of age into juniors and seniors,[1] one century for each within the several classes, making ten centuries of juniors to the tribe, or in all three hundred and fifty tribal centuries, to which are to be added eighteen centuries of knights and probably five supernumerary centuries, amounting to a total of three hundred and seventy-three. This is substantially the view of Pantagathus.[2] Convincing evidence is afforded by a group of inscriptions of the imperial period.[3] From them we learn that under the emperors the urban tribes comprised severally (1) a corpus seniorum, (2) a corpus iuniorum, (3) the tribus Sucusana a corpus Iulianum, and the Palatine and Esquiline each a corpus Augustale. Every corpus consisted of several centuries. In the corpus Sucusana iuniorum were eight centuries divided into two groups of five and three respectively, the first group being evidently superior to the second. At the head of the century was a centurio or curator.[4] Eliminating the corpora which were named after emperors and which must have been instituted in their time, eliminating also the inferior centuries of the corpora seniorum and iuniorum, which were undoubtedly added either by the emperors or by the late republican censors, we have remaining five centuries to the

[1] P. 216, n. 4.

[2] A monk who lived 1494–1567. For his view see Drackenborch's commentary on Livy i. 43. To the 350 centuries of juniors and seniors he added 35 or 70 centuries of knights and a century of proletarians, making a total of 386 or 421 respectively. No scholar now holds to more than 18 equestrian centuries. With this and a few other variations as to supernumerary centuries his view has been adopted by Savigny, *Vermischte Schriften*, i. 1 ff.; Mommsen, *Röm. Trib.*; Genz, *Centuriatcom. nach der Ref.*; Ihne, *Hist. of Rome*, iv. 15; Herzog, *Röm. Staatsverf.* i. 324; Klebs, in *Zeitschr. d. Savignyst.* xii (1892). 181–244; Schiller, *Röm. Alt.* 633; Kübler, in Pauly-Wissowa, *Real-Encycl.* iii. 1956 ff.; Greenidge, *Rom. Publ. Life*, 253; Le Tellier, *Organ. cent.* 89 ff.; Göttling, *Gesch. der röm. Staatsverf.* 383; Peter, *Epoch. d. Verfassungsgesch.* 75; Morlot, *Comices élect.* 85 ff.

[3] *CIL.* vi. 196–8, 1104, 10097, 10214–8; *Inscr. bull. della comm. di Roma*, 1885. 161; *Notizie degli Scavi*, 1887. 191.

[4] There must have been in the reformed comitia two curators from each class for every tribe. This connection with the classes was wrongly transferred to the tribunes of the plebs by Livy iii. 30. 7; Ascon. 76.

corpus as it must have stood in the period immediately following the reform. This result confirms the view suggested by Pantagathus.

It was accepted by Mommsen in his *Römische Tribus* (1844) and in the first seven editions of his *History of Rome;* but in his *Römisches Staatsrecht*[1] he has offered a radical modification: while holding to the 373 centuries, he maintains that they were so combined as to cast in all 193 votes. According to this theory the first class comprised $35 \times 2 = 70$ centuries, each with one vote, whereas the remaining classes together, made up of $4 \times 35 \times 2 = 280$ centuries, cast but 100 votes. How the centuries were combined Mommsen does not presume to say. He considers it possible, however, that for instance sixty of the seventy centuries of the second class were grouped by threes and ten by twos, making twenty-five voting groups in all. Had he attempted to follow out in detail the practical working of the theory, he would hardly have offered it to the public. The votes could not have been determined by a majority of component centuries, for according to the theory some groups com prised but two. Or if the group voted by individuals without regard to the component centuries, the four lower classes were practically composed not of centuries but of larger, nameless voting divisions.

His main support is the account of the centuriate organization given in Cicero's *Republic*,[2] which speaks of a hundred and ninety-three centuries, and which Mommsen[3] believes to be a description of the reformed organization. Cicero's[4] assumption that the essential facts were known to the friends of the younger Scipio — the leader in the dialogue — and the discrepancy in the number of centuries of the first class between the Servian system as given by the annalists (Livy and Dionysius) and the organization which Cicero describes[5] are the chief points in Mommsen's favor. Against his interpretation it may be urged

[1] III. 274 ff.; cf. his *History of Rome* (Eng. ed. 1900), iii. 52 f. [2] II. 22.

[3] *Röm. Staatsr.* iii. 274 with notes; cf. Guiraud, in *Rev. hist.* xvii (1881). 16.

[4] *Rep.* ii. 22. 39: "Quae discriptio, si esset ignota vobis, explicaretur a me; nunc rationem videtis esse talem."

[5] Seventy in Cicero's description, eighty according to the annalists; p. 67 f., 205, n. 5.

(1) that the passage is exceedingly uncertain;[1] (2) that Cicero makes Servius Tullius the author of the organization which he describes; (3) that though the reform affected the details of the comitial organization, the principle — a distribution of the people according to ordines, census, aetates — remained the same from the time of Servius to the time of Cicero, so that he could assume that it was known to the hearers of Scipio; (4) that as to the discrepancy in the number of centuries in the first class, on the assumption that the text is correct, (*a*) Cicero, who was by no means infallible, may have made a mistake,[2] being in this case especially liable to error because in the reformed organization the first class comprised seventy centuries, or (*b*) in case Cicero is right, either (*m*) the annalists may be in error in assigning eighty centuries to the first class, or (*n*) in an early stage of transition from the old to the new organization the number of centuries in the first class may have been cut down to seventy with a corresponding increase of ten in some other part of the system; (5) that Mommsen's theory is refuted by the language of Cicero,[3] who speaks of the voting divisions of the four lower classes not as groups of centuries but simply as centuries, the absence of a name for such a group being one of the strongest arguments against its existence. Mommsen's interpretation of the passage is in brief too strained and unnatural to commend itself to the understanding. Apart from its lack of support in the sources, an objection to the theory is

[1] It is unnecessary here to enter into the controversy regarding the text. Evidently the second hand has drawn from a reliable source (Klebs, ibid. 200–210); yet in view of its uncertainty the passage should not be made the foundation of a theory so thoroughly objectionable as Mommsen's.

[2] To Soltau, *Jahrb. f. cl. Philol.* xli (1895). 411, n. 3, this explanation seems "too cheap."

[3] In the clause "Ut equitum centuriae cum sex suffragiis et prima classis addita centuria, quae . . . data, LXXXVIIII centuriae habeat," centuriae applies to the centuries proper, but in the clause immediately following, "Quibus ex centum quattuor centuriis (tot enim reliquae sunt) octo solae accesserunt," the word on Mommsen's supposition must denote not the centuries themselves but the voting groups of centuries. Though Mommsen usually avoids the application of the term century to the assumed voting units, he allows himself to do so on p. 274 and in n. 2. Granting that in this instance he has used the word correctly, we should have the first class composed of simple centuries and the others of centuries which were themselves composed of centuries — an evidently absurd result of his assumption.

its extreme impracticability. Holding that juniors and seniors could not have been brought together in the same voting divisions, and assuming that the combinations were made by twos and threes and that the four lower classes had an equal number of votes, Klebs has worked out the simplest arrangement as follows:

Class	Centuries		Votes
I	70	One vote each	70
II	70	35 of seniors	
		8 in groups of two . . 4 votes	
		27 in groups of three . 9 votes	
		13 votes	
		35 of juniors	
		2 in a group . . . . . 1 vote	
		33 in groups of three . 11 votes	
		12 votes	
		Total	25
If the remaining classes are like the second, we shall have:			
III	70		25
IV	70		25
V	70		25
Equites	18	One vote each	18
Supernumeraries	5	One vote each	5
		Total	193[1]

This complex system would make the action of the centuriate assembly exceedingly slow and difficult, and would be as useless as impracticable; for if the object was to reduce the votes of the first class by ten and to make the other classes equal, that end could have been easily attained by the readjustment of numbers on the old basis, without the invention of this awkward grouping, the like of which is not known to have existed in any ancient or modern state. Such a reform, too, would bring out

[1] Klebs, in *Zeitschr. d. Savignyst.* xii (1892). 197. Not less complicated is Le Tellier's supposition (*Organ. cent.* 88, n. 1) that the four classes may have differed in number of votes (for example, 30, 28, 28, 14), and that the several voting groups of a class comprised the same number of centuries, in some cases with a fraction of a century, e.g., 2, 2½, 2½, 5 centuries for the four classes respectively. This combination would be as undemocratic and as impracticable as any of those proposed by Klebs.

more clearly than ever the inequality of rights in the comitia,[1] and therefore could not have been called democratic by Dionysius.[2] It is contradicted also by Livy,[3] who distinctly states that the number of centuries was changed. Lastly the objection must be made that the joining of centuries of different tribes into voting units cannot be reconciled with the imperial grouping of centuries of the same tribe into corpora,[4] and is refuted by the many citations which assume the voting or the announcement of the votes to have proceeded according to tribes[5] as well as according to classes.[6]

Lange,[7] not thinking it necessary to preserve a total of a hundred and ninety-three votes but accepting in the main the view of Pantagathus, tries to bring the centuries into relation with the tribes by assuming that the seventy half-tribes, severally comprising five centuries of juniors or seniors, were given each one vote in the "concluding announcement" (Schlussrenuntiation), this vote being determined by a majority of the five component centuries. In like manner the eighteen centuries of knights were grouped in divisions of three centuries each, so as to count six votes in the final announcement, hence the name sex suffragia. The supernumerary centuries were grouped in one or two voting divisions, so that in all seventy-seven or seventy-eight votes were cast.[8] As to the process, he believed that after the prerogative the seventy centuries of the first class and the eighteen centuries of cavalry voted simultaneously, and while their votes were being counted the second class was voting, the votes, in his opinion, not being announced as soon as known.[9] This view as to the announcement is contradicted by the sources,[10] which clearly imply that

[1] Klebs, ibid. 187. [2] P. 214, n. 6.

[3] I. 43. 12. [4] P. 220. [5] P. 217.

[6] P. 216, n. 3. Soltau's modifications, *Jahrb. f. Philol.* xli (1895). 410–4, of Mommsen's hypothesis are no improvement on the original.

[7] *Röm. Alt.* ii. 510 ff.

[8] In this way the prerogative century, after serving as an omen (Cic. *Mur.* 18. 39), would be joined with four others of the same half-tribe.

[9] Lange, *Röm. Alt.* ii. 526.

[10] Livy xliii. 16. 14 (171 B.C.): "Cum ex duodecim centuriis equitum octo censorem condemnassent multaeque aliae primae classis, extemplo principes civitatis . . . vestem mutarunt." This proves that the votes were made public early in

the reports were made public as they came in. Against his theory may be urged also (1) the fact that no name existed for the half-tribe, which in his opinion cast one vote in the closing announcement,[1] as well as (2) the fact that the sources give more than six votes to the equites in the late republic.[2] Lange is right, however, in understanding that the voting did not now, as formerly, cease when a majority was reached, but continued till all the centuries had voted.[3]

A solution of the problem as to the order of voting suggested by Klebs[4] seems to satisfy all conditions. The centuries gave their votes by classes, each being announced as soon as it was ascertained. Then when all the centuries had voted, a count was taken by tribes in the order determined by lot;[5] and a second announcement, made in that order, decided the election or other act of the people. Each candidate was declared elected when a majority of votes was reached in his favor.

the course of the voting, though not necessarily before the second class began; cf. Cic. *Phil.* ii. 33. 82. Lange too hastily rejects the evidence of these two passages. The vote of each century was announced separately; Varro, *L. L.* vii. 42: "Quod . . . comitiis cum recitatur a praecone dicitur olla centuria," which would not be true, if, as Lange supposes, the announcement was by tribal groups of five.

[1] Cf. Gerathewohl, *Reit. und Rittercent.* 90, n. 2.

[2] As authority for the six votes of the eighteen equestrian centuries Lange cites Cic. *Rep.* ii. 22. 39: "Equitum centuriae cum sex suffragiis"; *Phil.* ii. 33. 82; "Prima classis vocatur, renuntiatur; deinde, ita ut adsolet, suffragia." So far as these two passages are concerned, Lange could be right; but his view is contradicted by Festus 334. 29 ("Sex suffragia appellantur in equitum centuriis, quae sunt adiecta — MS. adfectae — ei numero centuriarum, quas Priscus Tarquinius rex constituit"), which distinguishes the sex suffragia from the remaining centuries of cavalry, and by Livy xliii. 16. 14, which gives each century a vote.

[3] All the tribes voted; Livy vi. 21. 5 (a historical anticipation but useful for showing later custom); viii. 37. 12; xxix. 37. 13 f.; ep. xlix; Val. Max. ix. 10. 1. All the centuries voted; Livy xxiv. 9. 3; xxvi. 18. 9; 22. 13; xxvii. 21. 4; xxviii. 38. 6; xxix. 22. 5; xxxi. 6. 3; Cic. *Sull.* 32. 91; *Pis.* 1. 2; *Imp. Pomp.* 1. 2.

[4] In *Zeitschr. d. Savignyst.* xii (1892). 230 ff.

[5] Lucan v. 392 ff.:

> "Fingit solemnia campi
> Et non admissae diribet suffragia plebis
> Decantatque tribus et vana versat in urna."

These verses picture a sham election held by Caesar in 49; he pretends to hold comitia, counts the votes of the plebs, who are not really permitted to be present, calls off the tribes, and draws lots for them from the empty urn.

Regarding the supernumerary centuries our information is extremely meagre. As it does not seem likely that influential corporations would be robbed of a privilege they once enjoyed, we may reasonably believe that the artisans, musicians, and accensi velati retained centuries of their own in the reformed organization. Cicero,[1] however, speaks of a single century of artisans for his time. The two industrial colleges, which had existed from an early age,[2] seem to have been joined in one and to have continued into the imperial period after nearly all the other guilds had been abolished.[3] When the two were united, they were probably reduced to a single vote in the assembly. In like manner the liticines, or tubicines, and the cornicines were united in one college of musicians[4] and were probably given one vote. The accensi velati, too, formed a college composed of wealthy freedmen, freeborn, and even knights.[5] We may well suppose that it still possessed a vote in the centuriate assembly. Lastly may be mentioned the century of proletarians and that of the tardy,[6] which were as necessary after the reform as before it.[7] Although new centuries were added, possibly by the later republican censors and certainly by the emperors,[8] the principle of the reformed organization remained unchanged.[9]

In the reformed assembly the equestrian centuries ceased to

[1] *Orat.* 46. 156: "Centuriam, ut Censoriae Tabulae loquuntur, fabrum audeo dicere, non fabrorum." Cicero seems to refer to recent Tabulae Censoriae; though he might quote ancient poets, he was not the man to ransack old documents even to learn the ancient usage of words.

[2] Plut. *Num.* 17; Pliny, *N. H.* xxxiv. 1. 1.

[3] Ascon. 75: "Postea collegia S. C. et pluribus legibus sunt sublata praeter pauca atque certa, quae utilitas civitatis desiderasset, qualia sunt (MS. quasi, ut) fabrorum fictorumque."

[4] P. 207, n. 1.

[5] See citations in Olcott, *Thes. ling. lat. ep.* i. 51.

[6] P. 208 f.

[7] That these supernumerary centuries were abolished at the time of the reform is argued by Huschke, *Verf. des. Serv.* 622 f.; Plüss, *Centurienverf.* 28, 34; Genz, *Centuriatcom. nach der Ref.* 12; Klebs, in *Zeitschr. d. Savignyst.* xii. 218. That they continued in the new system is the belief of Mommsen, *Röm. Staatsr.* iii. 281 ff.; Lange, *Röm. Alt.* ii. 512; Le Tellier, *Organ. cent.* 90.

[8] P. 220 f.

[9] The supposed Sullan reaction to the earlier form of the centuriate comitia is not well founded; p. 406.

be prerogative.[1] A century was drawn from the first class[2] by lot[3] to take the lead in voting. Then came the remainder of the class, including the equestrian centuries and the single century of artisans, eighty-eight in all. In the announcement the votes of the equites were distinguished from those of the class;[4] and the sex suffragia, no longer exclusively patrician,[5] were reported after the other eighty-two. The inferior place assigned to the suffragia was evidently to remove them far from their earlier prerogative position so as to free the assembly from patrician influence. Next the lower classes, among which other supernumerary centuries were distributed as in the earlier republic, voted in order; and finally came the summing up by tribes in the way described above. The old military array gave place to a civilian grouping like that already established for the curiate and tribal assemblies.[6]

I. THE EARLIER ORGANIZATION: the literature on this subject is essentially the same as for ch. iv.

II. THE REFORM: Schulze, C. F., *Volksversamml. der Römer*, 69 ff.; Huschke, Ph. E., *Verfass. des Königs Servius Tullius*, ch. xii; Peter, C., *Epochen der Verfassungsgesch. der röm. Republik*, 42 ff.; Savigny, F. C., *Verbindung der Centurien mit den Tribus*, in *Vermischte Schriften*, i. 1–13; for other early literature, see Lange, *Röm. Alt.* ii. 495 ff., notes; Neumann,

[1] P. 212.

[2] P. 217. This is a necessary inference from the term used to describe a prerogative centuria, e.g., Aniensis iuniorum. Had the drawing been from a group of classes, the number of the class would have been added, e.g., Aniensis iuniorum secundae classis.

[3] Cic. *Phil.* ii. 33. 82.

[4] Livy xliii. 16. 14: "Cum ex duodecim centuriis equitum octo censorem condemnassent multaeque aliae primae classis" (171 B.C.). This passage proves that the announcement distinguished the votes of the twelve equestrian centuries both from the sex suffragia and from those of the class. Cic. *Phil.* ii. 33. 82: "Sortitio praerogativae; quiescit. Renuntiatur; tacet. Prima classis vocatur, renuntiatur; deinde, ita ut adsolet, suffragia; tum secunda classis vocatur." Here Cicero informs us that the (sex) suffragia were announced after the report of the first class had been given. The circumstance that he does not mention the separate calling of the suffragia indicates that their separation from the first class was limited to the announcement. There is no reason why the Romans should have added to the length of the centuriate sessions by assigning a part of the day to the exclusive use of these six centuries. Livy, i. 43. 8 f., has their inferiority in mind. It is unnecessary to amend the Ciceronian passage. The attempt of Holzapfel, in *Beiträge zur alten Gesch.* i (1902). 254 f., is unsuccessful. Klebs, in *Zeitschr. d. Savignyst.* xii (1892). 237 ff., fruitlessly opposes the division of the equites into these two groups.

[5] P. 74 f., 95 f., 209 f.

[6] P. 211, 467, 469.

C., *Zeitalter der punischen Kriege*, 187 ff.; Nitzsch, K. W., *Gesch. der röm. Republik*, i. 146 f.; Mommsen, *Röm. Tribus*, 66–113, 143–149; *Röm. Staatsr.* iii. 269 ff.; Lange, L., *De magistratuum romanorum renuntiatione et de centuriatorum comitiorum forma recentiore*, in *Kleine Schriften*, ii. 463–493; *Röm. Alt.* ii. 494–516; Madvig, J. N., *Verfass. und Verw. des röm. Staates*, i. 117–23; Herzog, E., *Röm. Staatsverf.* i. 320–7; *Die Charakter der Tributcomitien . . . und die Reform der Centuriatcomitien*, in *Philol.* xxiv (1876). 312–29; Willems, P., *Droit public Romain*, 92–8; Mispoulet, J. B., *Institutions politiques des Romains*, i. 46–8; Greenidge, A. H. J., *Roman Public Life*, 252 f.; Abbott, F. F., *Roman Political Institutions*, 74–6; Karlowa, O., *Röm. Rechtsgesch.* i. 384–8; Soltau, W., *Altröm. Volksversamml.* 358–71; *Cicero de Re Publica und die servianische Centurienordnung*, in *Jahrb. f. Philol.* xli (1895). 410–4; Kappeyne Van de Coppello, J., *Comitien*, 20 ff.; Morlot, E., *Comices électoraux sous la république Rom.* ch. v; Goguet, R., *Centuries*, ch. iv; Le Tellier, M., *L'organisation centuriate*, ch. ii; Hallays, A., *Comices à Rome*, 25–31; Plüss, H. T., *Entwick. der Centurienverfass.*; Ullrich, J., *Centuriatcomitien*; Clason, O., *Zur Frage über die reformierte Centurienverfass.* in Heidelb. *Jahrb.* lxv (1872). 221–37; Ritschl, F. W., *Opuscula Philologica*, iii. 637–73; Genz, H., *Centuriat-Comitien nach der Reform*; Guiraud, P., *De la Reforme des Comices centuriates au III Siècle av. J.-C.* in *Rev. hist.* xvii (1881). 1–24; Klebs, E., *Stimmenzahl und Abstimmungsordnung der ref. servianischen Verf.*, in *Zeitschr. d. Savignystift. f. Rechtsgesch. Röm.* Abt. xii (1892). 181–244; Meyer, E., *Die angebliche Centurienreform Sullas*, in *Hermes*, xxxiiii (1898). 652–4; Humbert, G., in Daremberg et Saglio, *Dict.* ii. 1389 f.; Kübler, in Pauly-Wissowa, *Real-Encycl.* iii. 1956–60.

CHAPTER XI

THE FUNCTIONS OF THE COMITIA CENTURIATA

I. *Elective*

THE first act of the centuriate assembly according to Livy,[1] who has certainly placed the beginning of its functions at the earliest possible date,[2] was the election of the first two consuls. Thereafter these comitia not only continued to elect the consuls, but also naturally acquired the right to choose all elective higher magistrates, extraordinary as well as ordinary, who were entrusted temporarily or permanently with some or all of the consular power — including the decemviri legibus scribundis, 451, 450, the tribuni militum consulari potestate, beginning in 444, the two censors, beginning in 443 (or 435?), and the praetors, increased gradually from one in 366 to sixteen under Caesar.[3] The activity of this assembly in elections expanded with the growth in the number of offices; and its importance was further enhanced by the opening of the patrician magistracies to plebeians. The validity of a centuriate elective act depended upon the subsequent curiate law, which soon became a mere form, and upon the patrum auctoritas. The latter, too,

[1] P. 201, n. 2.

[2] The idea that Servius Tullius gave this assembly the right to elect kings (Dion. Hal. v. 12. 3; Lange, *Röm. Alt.* i. 458; ii. 531) is proved wrong by the circumstance that the organization attributed to him was purely military, from which the comitia centuriata slowly developed; p. 203 ff.

[3] Lange, *Röm. Alt.* ii. 531. On the number of praetors, see Mommsen, *Röm. Staatsr.* ii. 202. The election of a centurion to the function of dedicating a temple (Livy ii. 27. 6) in the period before the first secession Lange (ibid. i. 917; ii. 532) with good reason considers a myth. It is doubtful, however, whether he is right in viewing as historical the so-called lex Valeria de candidatis, assigned to the first year of the republic (Plut. *Popl.* 11; Lange, ibid. ii. 532), which ordered the presiding magistrate to accept as candidates all qualified patricians who offered themselves for the consulship — a principle said to have been afterward applied to other patrician offices.

was deprived of all vitality by the Maenian plebiscite,[1] which required the act to be passed before the election while the issue was uncertain.[2] The date of this plebiscite is unknown; but it probably followed close upon the Hortensian legislation (287).[3]

II. *Legislative*

In an earlier chapter[4] it was shown that primitive Rome, like primitive Greece, regarded law as god-given — a conception which left no scope for legislation by a popular assembly. Though under the kings the people may occasionally have been called to vote on a resolution affecting their customs, the comitia curiata never acquired a law-making function.[5] Even the declaration of war, which historical Rome looked upon as a lex, was issued by the king without the consent of the community, his only need being to secure the hearty support of the warriors.[6] It seems probable therefore that this question came, not before the comitia, but before a military contio.[7] From the custom of the soldiers to participate in the settlement of questions touching their interests[8] developed the function of declaring war. The people, however, were slow in acquiring the right. It is true that several such acts are mentioned by Dionysius for the early republic — for the war against the Volscians, 489,[9] against Veii, 482,[10] and against the Aequians and Volscians in 462.[11] These instances may be explained either as acclamations in contio or as exceptional votes in the comitia centuriata, or with more probability, owing to the character of our sources for those early times, as anticipations of later usage. The decisive fact in the problem is that as late as 427 a controversy arose as to whether war could be declared by order of the people only, or whether a senatus consultum was sufficient. It was settled in favor of the people by the threats of the plebeian tribunes to impede the levy.[12] For the next hundred years mention is often

[1] P. 331.

[2] Cic. *Brut.* 14. 55; cf. Lange, *Röm. Alt.* i. 409; ii. 115, 532.

[3] On the centuriate elective function in general, see Lange, ibid. ii. 531–3. Willems, *Sén. Rom.* ii. 69 ff., contends unconvincingly that the Maenian statute should be assigned to 338.

[4] P. 177.

[5] P. 181 f.

[6] P. 177.

[7] P. 177.

[8] P. 202 f.; cf. Lange, *Röm. Alt.* ii. 599 f.

[9] Dion. Hal. viii. 15. 3.

[10] VIII. 91. 4.

[11] IX. 69. 2.

[12] Livy iv. 30. 15.

made of the exercise of this function by the people;[1] and when a declaration was once issued by them, it could be recalled only by their vote.[2] During the period of the Samnite wars the assembly still more frequently made use of this right.[3] In better known times we find it firmly established. The people declared war against Carthage in 264,[4] against the Illyrians in 229,[5] against Carthage again in 218,[6] against Macedon in 200,[7] against Antiochus in 191,[8] against Macedon again in 171,[9] against Jugurtha in 111.[10] In the case of the two Macedonian wars here referred to, the declaration is mentioned as an act of the comitia centuriata.[11] In 167 the praetor M'. Juventus Thalna attempted to pass through the tribal assembly a lex de bello indicendo against the Rhodians, but was effectually opposed by a tribune of the plebs;[12] so that the function continued to be exclusively centuriate. Cn. Manlius Volso in 189 made war upon the Gallograeci without an order of the people or a decree of the senate, and was on that ground accused in the senate by two of his legati.[13] We conclude, however, that the charge was fruitless from the circumstance that the senate finally decreed him a triumph.[14] For beginning war against the Histrians on his own responsibility the consul A. Manlius, 178, was threatened with a prosecution, which was quashed by a tribunician veto.[15] Licinius Lucullus was not even brought to trial for the war he waged without an order of the people against the Vaccaei in 151.[16] Hence it appears that though a magistrate could not legally begin war on his own initiative, there was no real

[1] Livy iv. 58. 8, 14; 60. 9 (406); vi. 21. 3 (383) 22. 4 (382); vii. 6. 7 (362); 12. 6 (358); 19. 10 (353); 32. 1 (343). [2] Livy vii. 20. 3.

[3] Livy viii. 22. 8 (327); 25. 2 with Dion. Hal. xv. 14 (326); Livy viii. 29. 6 (325); ix. 43. 2 (306); 45. 8 (304); x. 12. 3 (298); 45. 6 f. (293).

[4] Polyb. i. 11. [5] Dio Cass. Frag. 49. 5; Zon. viii. 19. 4. [6] Livy xxi. 17. 4.

[7] Livy xxxi. 5–8; especially 6. 1, 3; 7. 1. [8] Livy xxxvi. 1. 4 f.; 2. 2 f.

[9] Livy xlii. 30. 10 f.; 36. 2. [10] Oros. v. 15. 1: "Consensu populi."

[11] Livy xxxi. 6. 3; 7. 1; xlii. 30. 10; cf. 36. 1.

[12] Livy xlv. 21; Polyb. xxx. 4. 4 ff.

[13] Livy xxxviii. 42. 11; 45. 4 ff. [14] Livy xxxviii. 50. 3.

[15] Livy xli. 6; 7. 8; cf. Mommsen, *Röm. Staatsr.* ii. 320, n. 3.

[16] Appian, *Iber.* 51, 55. The condemnation of M. Aemilius Lepidus, proconsul in 136, to a fine by a judgment of the people seems to have been more for the failure of his war upon the same state than for beginning it without authorization; Appian, *Iber.* 80–82; Livy, ep. lvi; Oros. v. 5. 14.

danger of condemnation for so doing. The reason is that those in authority attached little importance to the right of the comitia in the matter. Only once is mentioned a fear lest the people may not give their consent to a war.[1] One case of rejection is recorded, and even here the centuries at a second session obediently accepted the consul's proposition.[2] The control of diplomacy and of the revenues by the senate and magistrates assured these powers the practical decision of questions of war and peace to such an extent that ratification by the assembly could ordinarily be counted on as certain; and its influence decreased with the expansion of the empire. Meantime, however, the idea of popular sovereignty, which was expressing itself in other spheres of government, effectually demanded, if only in form, some concession to the assembly in this field as well; and accordingly in the formula of declaration "populus" wholly takes the place of the once all-important "senatus."[3] By such empty concessions the nobility rendered the people more docile. Thus to the end of the republic the centuriate assembly retained the constitutional right to decide questions of aggressive war, although in practice the magistrates nearly regained the place which they and the senate had held during the century following the overthrow of kingship.[4]

The nature of our sources does not allow a precise judgment regarding the importance of the comitia curiata in the early republic. To the time of the Gallic invasion it may occasionally have passed resolutions affecting the status of citizens.[5] But as legislation never became an acknowledged function of the curiae, we are in a position to assert that through the comitia centuriata the people were first introduced into this sphere of public life.[6]

The earliest legislation of this assembly, in fact the earliest recorded legislative act of the Roman people, was the lex de provocatione attributed to Valerius Publicola, consul in the first

[1] Livy iv. 58. 14.

[2] This is the Macedonian war beginning in 200; p. 231; cf. Lange, *Röm. Alt.* ii. 602.

[3] P. 176; Gell. xvi. 4. 1; Livy xxxvi. 2. 2.

[4] Dio Cass. xxxviii. 41. 1 ff.; Cic. *Pis.* 21. 48 f.

[5] E.g., the act which recalled Camillus from exile; Livy v. 46. 10; xxii. 14. 11; Cic. *Dom.* 32. 86.

[6] P. 181 f.

year of the republic, 509.[1] It was also through the centuriate assembly that the consuls Valerius and Horatius in 449 passed a law which forbade the election of a magistrate without appeal, and affixed as a penalty the outlawing of the trespasser.[2] The third Valerian law of appeal in 300[3] was an act of the same assembly, whereas all three Porcian laws on the same subject seem to have been tribal.[4] The legislative function of the centuriate assembly, resting in the pre-decemviral period simply on precedent, brought into being the statute of 471 to establish a tribal assembly for the transaction of plebeian business, improperly known as the Publilian law,[5] the lex sacrata for the division of the Aventine among the plebeians, erroneously termed Icilian, 456,[6] the lex Aternia Tarpeia de multae dictione, 454,[7] the lex Menenia Sextia on the same subjects in 452,[8] the laws ratifying the Twelve Tables in 451, 449[9] — all excepting the second having reference to the limitation of the magisterial power. Regarding the creation of offices, no mention is made of a law for the institution of the consulate itself; but the centuries passed a law for the creation of the dictatorship, 501,[10] and of the decemviri legibus scribundis, which should be named Sestian after the consul who undoubtedly proposed it, 452.[11] Thus far popular legislation had no basis excepting precedent, but a law of the Twelve Tables now provided that there should be resolu-

[1] P. 201, 240.

[2] Livy iii. 55. 4; Cic. *Rep.* ii. 31. 54.

[3] Livy x. 9. 5; cf. p. 242 below.

[4] P. 250 f. 349.

[5] P. 270 f.

[6] P. 272.

[7] P. 269.

[8] Fest. 237. 17; Lange, *Röm. Alt.* i. 622; ii. 603. The contents are unknown.

[9] Livy iii. 34. 6. Doubt has been thrown on the early date of the Twelve Tables by Pais, *Storia di Roma*, I. i. 558–606, and on their official character as well by Lambert, *La question de l'authenticité des XII Tables et les annales maximi; L'histoire traditionelle des XII Tables et les critères d'inauthenticité des traditions en usage dans l'école de Mommsen* in *Mélanges Ch. Appleton*, 503–626; *La fonction du droit civil comparé*, 390–718; *Le problème de l'origine des XII Tables*, in *Revue générale de droit*, 1902. 385 ff., 481 ff. Their views are controverted by Greenidge, in *Eng. Hist. Rev.* xx (1905). 1–21. For other literature on the subject, see *Jahresb. ü. Altwiss.* cxxxiv (1907). 17 ff.

According to Diod. xii. 26. 1, the last two tables were drawn up by Valerius and Horatius, consuls in 449.

[10] Livy ii. 18. 5; Dion. Hal. v. 70. 5; Lange, *Röm. Alt.* i. 585; ii. 603. Dion. Hal. vi. 90. 2, assumes the enactment of a statute for the creation of the plebeian tribunate, 494.

[11] Livy iii. 33. 4; Dion. Hal. x. 55. 3 (cf. p. 273).

tions and votes of the people, and whatever the people voted last should be law and valid — the first clear enunciation of the principle that the will of the people, whenever expressed, prevailed over every other authority.[1] It was far from establishing popular sovereignty, however, for the initiative remained with the magistrates.

The activity of the comitia centuriata, thus authoritatively established, manifested itself in the passing of the Valerian-Horatian laws of 449,[2] the lex Iulia Papiria de multarum aestimatione, 430,[3] the law for the election of six military tribunes by the comitia tributa, 362,[4] the law of the dictator Publilius Philo, 339,[5] the third Valerian law concerning appeal, 300,[6] and finally the Hortensian law, 287.[7] All have reference to the regulation of magistracies or of assemblies. Meantime the centuriate comitia passed the law for instituting tribunes of the soldiers with consular power, 445,[8] and censors, 443[9] (or 435?), for increasing the number of quaestors, 421,[10] for instituting the praetorship, 367,[11] and the curule aedileship in the same year.[12] All the laws thus far mentioned, excepting that for the division of the Aventine, effected important modifications of the constitution, the most of them forced upon the senate and magistrates in the struggle for equal rights in which the commons were engaged with the nobility. In like manner two provisions of the Valerian law of 342, (1) that the name of no soldier should be erased

[1] Livy vii. 17. 12: "In Duodecim Tabulis legem esse, ut, quodcumque postremum populus iussisset, id ius ratumque esset; iussum populi et suffragia esse." After the decemviral legislation an attempt was made to extend the principle to elections, as in the case here mentioned by Livy. [2] P. 274 ff. [3] P. 287.

[4] Livy vii. 5. 9; Sall. *Iug.* 63; Cic. *Cluent.* 54. 148; *Leg.* iii. 3. 6; Lange, *Röm. Alt.* ii. 25, 604. It is only an inference that this important constitutional change was brought about by the centuries rather than by the tribes.

[5] P. 299 f. [6] P. 233, 241 f. [7] P. 313.

[8] Livy iv. 6. 8. A law is not mentioned but must be inferred; Lange, *Röm. Alt.* i. 650; ii. 603.

[9] Livy ix. 34. 7: "Illi antiquae (legi), qua primum censores creati sunt"; cf. Lange, ibid. i. 664. In 433 a law, doubtless centuriate, of the dictator Mam. Aemilius cut down the term of the censors to eighteen months; Livy iv. 24. 5 f.; ix. 33. 6; ch. 34.

[10] Livy iv. 43; Tac. *Ann.* xi. 22; cf. Lange, ibid. i. 666. [11] Livy vi. 42. 11.

[12] Ibid. § 13. The laws last named, relating to the quaestorship, praetorship, and aedileship, are not mentioned by the ancient authorities but are necessarily assumed; Lange, *Röm. Alt.* i. 476, 479.

from the muster roll without his consent, (2) that no military tribune should be degraded to the rank of centurion,[1] established under the sanction of an oath certain fundamental rights on which the soldiers and their officers respectively insisted. Another provision, the total abolition of debts,[2] if indeed it is historical, was administrative, and is considered therefore in another connection.[3] Of the same nature, though less sweeping, was the Hortensian provision for the relief of debtors.

As soon as there came to be plebeian senators (about 400), the patricians reserved to themselves the right to decide on the legality of legislative and elective acts of the people under patrician presidency — a right designated by the phrase patrum auctoritas, which signified originally the authorization of the senators, thereafter of the patrician senators. Till 339 the patres were at liberty to give or withhold the auctoritas; but in that year an article of the Publilian law required them to grant it to legislative acts of the centuries before the voting began and while the issue was still in doubt, reducing it in this way to a mere formality.[4] The effect was to free centuriate legislation from the constitutional control hitherto exercised by patrician senators.[5] Henceforth the resolutions of this assembly could be declared illegal by no less than a majority of the entire senate. The Publilian statute, accordingly, deprived the patricians of an important power, whereas the senate as a whole continued through its consulta to exercise an increasing influence over the comitia centuriata. Polybius rightly ascribes to the consuls, therefore, the function of bringing the resolutions of the senate before the assembly. It could not have been the intention of Publilius Philo to energize the comitia centuriata

[1] Livy vii. 41. 4. [2] Appian, *Samn.* i. 3; cf. p. 298. [3] P. 238.

[4] Livy viii. 12. 15; cf. i. 17. 9. The auctoritas applied to comitia curiata as well as centuriata; Cic. *Dom.* 14. 38; Livy vi. 41. 10. On the comitia tributa, see p. 314.

[5] The view maintained by Willems, *Sén. Rom.* ii. 33 ff., that the patres auctores were all the senators, not merely the patrician members, is disproved by Cic. *Dom.* 14. 38 (Should the patriciate become extinct, there would no longer be "auctores centuriatorum et curiatorum comitiorum"). In spite of some looseness of statement in the passage cited, there seems to be no good ground for considering either the whole oration spurious or the particular reference to the auctoritas inaccurate. The question, too complex for detailed treatment in this volume, is of practical importance for the period only from about 400 to 339.

by this provision; for another article of the same statute, confirming the validity of the tribunician assembly of tribes, as then actually constituted exclusively of plebeians, paved the way for the Hortensian law, which by making the acts of the tribunician assembly in every respect equal to those of the centuries, deprived the latter of their great importance as a factor in constitutional progress. From the time of Hortensius to the time of Sulla no constitutional statute is known to have been enacted by the centuriate assembly; though our sources do not give us clear information on the point, it is highly probable that the consuls and dictators of this period preferred to bring their measures however important before the tribes.[1] In Sulla's time the lex Valeria, 82,[2] clothing him with his extraordinary dictatorship rei publicae constituendae, must have been passed by the centuries, which alone in addition to the politically obsolete comitia curiata could be summoned by an interrex, as was the author of the law. This act, Lange remarks, cannot well be considered a revival of the legislative power of the centuries, as it was not only passed through intimidation and under a magistrate who had no constitutional right to initiate legislation, but it also created a legalized tyranny destructive of popular freedom.[3] In the words of Cicero it was the most iniquitous of all laws and most unlike a law.[4] Only one of Sulla's statutes, the lex de civitate Volaterranis adimenda, 81, which, depriving the Volaterrani of their civitas cum suffragio, placed them in the condition of the Latins of Ariminum, is known to have been an act of the centuries.[5] Probably all his other laws were ratified by the tribes.[6] C. Julius Caesar preferably used the tribes, although it is possible that his lex de provinciis and his lex iudiciaria came before the comitia centuriata.[7]

Sulla's constitutional legislation curtailed the powers of the plebeian tribunes and of their assembly, proportionally increas-

[1] Lange, *Röm. Alt.* ii. 605 f. [2] P. 412.

[3] Lange, *Röm. Alt.* i. 553; ii. 606.

[4] *Leg. Agr.* iii. 2. 5; cf. *Leg.* i. 15. 42; *Rosc. Am.* 43. 125; Schol. Gron. 435; Appian, *B. C.* i. 98. 458 ff.; Plut. *Sull.* 33.

[5] Cic. *Dom.* 30. 79; *Caecin.* 33. 95; 35. 102. [6] P. 416, n. 1.

[7] Cic. *Phil.* i. 8. 19 obscurely suggests that these two laws were centuriate, though Lange, *Röm. Alt.* ii. 606, doubts it; cf. p. 455.

ing the importance of the centuries; and although his form of government was of short duration, the optimates thereafter naturally preferred the comitia centuriata for the ratification of senatorial resolutions.[1] To this assembly accordingly belong the leges Vibiae of the consul C. Vibius Pansa, 43, which confirmed the acts of Caesar, and took the place of Antony's leges de coloniis deducendis and of his lex de dictatura tollenda.[2]

On the institution of the censorship, and by the law which called the office into being, it was enacted that elections of censors should be ratified, not by the curiae as in the case of other magistrates, but by the centuries themselves.[3] Before this date the principle was already established that the people should vote twice in the election of every magistrate in order that if they repented of their choice, they might recall it by a second vote.[4] As the primary function of the censors was the periodical reconstitution of the comitia centuriata, it was doubtless thought appropriate that this assembly alone should be concerned with the election. The lex centuriata de potestate censoria, evidently passed under consular presidency, remained, like the curiate law in confirmation of elections to other offices, a mere form. It was of too little practical significance ever to be noticed by the historians; in fact no individual instance of the passing of this act is mentioned by any extant writer. Characteristically the lex Aemilia, 433, which is alleged to have cut down the term of censorship to eighteen months,[5] and the lex Publilia Philonis, 339, which provided that at least one censor must be a plebeian,[6] were centuriate, whereas the Licinian-Sextian law, 367, which provided that one consul must be a

[1] Cf. Appian, *B. C.* iii. 30. 117.

[2] Cic. *Phil.* x. 8. 17; xiii. 15. 31; cf. v. 19. 53.

[3] Cic. *Leg. Agr.* ii. 11. 26: "Centuriata lex censoribus ferebatur."

[4] P. 185. Before the institution of the censorship the original motive of the sanctioning act — to leave the curiae a share in the elective function — must have given way to the purpose stated by Cicero and represented here in the text.

[5] Livy iv. 24. 3 ff.; cf. ix. 33 f.

[6] Livy viii. 12. 16; cf. p. 300. Livy's words referring to the censorship are corrupt, but the passage seems to have the meaning here given; cf. Mommsen, *Röm. Staatsr.* ii. 340, n. 2. It was not till 131 that advantage was taken of the provision; Livy, ep. lix. Herzog, *Röm. Staatsverf.* i. 257, refuses to believe that both censors might now be plebeian.

plebeian,[1] and the Genucian law, 342, permitting both to be,[2] were plebiscites.

An occasional attempt was made by a magistrate to usurp for the comitia centuriata a share in the administration. The first which is worthy of notice,[3] even though it may be mythical, is the agrarian proposal of Sp. Cassius, 486. According to the sources it was opposed by the senate and the colleague of the mover. Far from enacting it into a law, the author, on the expiration of his consulship, was himself accused of attempting to usurp the royal power, and was, in one version of the story, condemned to death by the assembly to which he had offered the bill.[4] The senate must have taken very seriously this first attempt of a magistrate to transfer some of its administrative power to the comitia. The law for the division of the Aventine Hill among the people, 456, was actually passed, most probably by the centuries.[5] It was forced upon the government by the plebeians, and did not serve as a precedent for the future. The Valerian law of 342,[6] which abolished debts, was an extraordinary administrative measure similar in character, but far more sweeping, to the clause for the relief of debtors in the Licinian-Sextian plebiscite.

If then the centuriate assembly was excluded from the field of administration, it must certainly in pre-decemviral times have had no part in religious legislation. The law which regulated the intercalary month inscribed on a bronze column by Pinarius and Furius, consuls in 472,[7] and the ancient law composed in archaic letters, mentioned in connection with the year 363,[8] requiring the praetor maximus to drive the nail on the ides of September, must accordingly have been acts, not of the centu-

[1] Livy vi. 35. 5. The provision that "at least" one should be plebeian is doubtless an anticipation of the Genucian law. [2] Livy vii. 42. 2; cf. p. 299.

[3] The alleged centuriate resolution granting a place for a dwelling to P. Valerius Publicola, passed under his own presidency (Ascon. 13), is still earlier and less trustworthy. [4] Livy ii. 41; Dion Hal. viii. 71, 73 ff.

[5] Livy iii. 31. 1. In 32. 7 he calls it the Icilian law with the idea that it was tribunician; but Dion. Hal. x. 32. 4, referring to the document kept in the temple of Diana, states that it was passed by the centuriate assembly; cf. Herzog, *Röm. Staatsverf.* i. 169, n. 1. Lange, *Röm. Alt.* i. 619; ii. 607 f., wrongly asserts that it was a plebiscite; cf. p. 272 below.

[6] P. 234 f., 298. [7] Macrob. *Sat.* i. 13. 21. [8] Livy vii. 3. 5.

riate assembly, but of the pontifical college. By the ratification of the Twelve Tables, composed chiefly of private laws and of closely connected religious regulations, an example was set for the invasion of both of these legal spheres by the centuriate assembly. But the precedent remained unproductive; for at this time the tribal assembly under plebeian or patrician magistrates was recognized as competent for legislation, and naturally took to itself the function of enacting the less weighty, for a time generally the non-constitutional, laws.[1] We are not to imagine the field of legislation clearly divided into constitutional, private, religious, and other departments; aside from the question of declaring an offensive war, which remained strictly the province of the comitia centuriata, the distinction in legislation was simply between the more and the less important; the dignified assembly of centuries, organized on an aristocratic-timocratic basis, was entrusted with the weightier business, whereas the simpler tribal assembly, which was easier to summon and more expeditious in action, served well enough for the despatch of lighter business. The question of the assembly to be employed was largely one of inertia; it required a far greater force of circumstances to set in motion for legislative purposes the cumbrous centuriate assembly than the relatively mobile gathering of the tribes.

III. *Judicial*

The jurisdiction of the people in whatever assembly was confined to cases of crime and of serious disobedience to magistrates.[2] It was not exercised by them in the first instance but only by way of appeal. In the opinion of the Romans Tullus Hostilius was the first to grant an appeal,[3] necessarily to the comitia curiata, which under the kings remained the only formally voting assembly.[4] During the regal period, the well attested

[1] Lange, *Röm. Alt.* ii. 608 f.

[2] Lange, *Röm. Alt.* ii. 541, and note on earlier literature; Mommsen, *Röm. Staatsr.* i. 148 f., 160 f.; iii. 353.

[3] Livy i. 26. 5–14; viii. 33. 8. For the theory that the popular assembly was sometimes a court of the first instance, see p. 260.

[4] Lange's idea (ibid. i. 457 f.; ii. 542) that Servius Tullius transferred appellate jurisdiction to the comitia centuriata rests upon his view that Servius was the author of the political centuriate organization.

appellate function of the comitia[1] was simply precarious, depending wholly on the pleasure of the king.[2] The Romans represented the advance in liberty brought by the republic as consisting partly in the establishment of the right of appeal for every citizen through the lex de provocatione of Valerius,[3] a consul of the first year of the republic — according to Cicero the first law carried through the comitia centuriata — providing that no magistrate should scourge or put to death a citizen without granting him an appeal to the people.[4] Although the historical existence of this Valerius has been questioned, and though his law has the appearance of being an anticipation of the Valerian law of 449, or more closely of that of 300,[5] we must admit in favor of its reality that the decemvirs were themselves exceptionally above appeal and that their laws guaranteed to the citizens an extensive use of the right.[6] The appellant, however, had no legal means of enforcing his right against the magistrate; he could do no more than "throw himself on the mercy of the crowd, and trust that their shouts or murmurs would bend the magistrate to respect the law."[7] The first lex Valeria, accordingly, brought little real benefit to the citizens.[8] The

[1] Cf. Fest. 297. 11–24; Cic. *Mil.* 3. 7; *Rep.* ii. 31. 54; Livy i. 26.

[2] Dion. Hal. iv. 25. 2; Livy i. 26. 5; Mommsen, *Röm. Staatsr.* ii. 11; *Röm. Strafr.* 474.

[3] For the earlier literature on the ius provocationis, see Lange, *Röm. Alt.* ii. 542, n.

[4] Cic. *Rep.* i. 40. 62; ii. 31. 53: "Legem ad populum tulit eam, quae centuriatis comitiis prima lata est, ne quis magistratus civem Romanum adversus provocationem necaret neve verberaret"; 36. 61; Livy ii. 8. 2; 30. 5 f.; iii. 33. 9 f.; Val. Max. iv. 1. 1; Plut. *Popl.* 11; Pomponius, in *Dig.* i. 2. 2. 16; Dion. Hal. v. 19. 4; cf. Ihne, in *Rhein. Mus.* xxi (1866). 168.

[5] Cic. *Rep.* ii. 31. 54; Livy iii. 55. 4; x. 9. 3–6; cf. Pais, *Storia di Roma*, I. i. 489.

[6] Cic. *Rep.* ii. 31. 54: "Ab omni iudicio poenaque provocari indicant XII Tabulae compluribus legibus; et quod proditum memoriae est, X viros, qui leges scripserint, sine provocatione creatos, satis ostenderit reliquos sine provocatione magistratus non fuisse."

[7] Greenidge, *Leg. Proced.* 311. Varro, *L. L.* vi. 68: "Quiritare dicitur is qui quiritium fidem clamans implorat"; cf. Cic. *Fam.* 32. 3; Livy ii. 55. 5 f.; iv. 14 f.

[8] Ihne, in *Rhein. Mus.* xxi (1886). 165 ff. Two cases of appeal, which indeed may be mythical, are mentioned by the annalists for the time before the decemviral legislation — that of Sp. Cassius, which is only one of several views as to his condemnation and death (Livy ii. 41; iv. 15. 4; Dion. Hal. viii. 77 f.; ix. 1. 1; 3. 2; 51. 2; x. 38. 3; Diod. xi. 37. 7; Cic. *Rep.* ii. 35. 60; Flor. i. 26. 7), and that of the plebeian M. Volscius Fictor for false testimony; Livy iii. 25. 2 f.

right was recognized and its application extended, as intimated above, by the Twelve Tables, in which various laws relating not only to capital crimes but to some of less importance granted an appeal to the people.[1] It was provided also by a special statute of the code that judgments as well as laws involving life or citizenship could be passed only by the comitiatus maximus, which is evidently the comitia centuriata.[2]

The Valerian-Horatian law of appeal, 449, was directed against the recurrence of the decemvirate or any similar magistracy with absolute jurisdiction, and hence resembled neither the laws of the Twelve Tables referring to the subject nor the Valerian law of 509. It provided that any one who brought about the election of such a magistracy might be put to death with impunity,[3] and is alleged to have been reinforced by a Duillian plebiscite of the same year, which set the penalty of scourging and death for the same offence.[4] These regulations could not refer to the dictatorship, which was appointive not elective, and which continued to possess absolute jurisdiction for more than a century after the decemviral legislation.[5]

But legal rights by no means imply actual enjoyment; and the decemviral laws of appeal must have long remained substantially inoperative through lack of a power sufficiently interested in their enforcement; "the might of the few was stronger than the liberty of the commons."[6] The right was limited, too, by the first milestone,[7] and hence did not affect the imperium militiae.[8] The only punishment of a magistrate for refusal to

[1] Cic. *Rep.* ii. 31. 54, quoted p. 240, n. 6. The statement of Cicero is too general; Greenidge, *Leg. Proced.* 312.

[2] Cic. *Leg.* iii. 4. 11: "De capite civis Romani nisi per maximum comitiatum ollosque, quos censores in partibus populi locassint, ne ferunto"; 19. 44; *Sest.* 30. 65; 34. 73: "De capite non modo ferri, sed ne iudicari quidem posse nisi comitiis centuriatis"; cf. *Rep.* ii. 36. 61; Plaut. *Pseud.* 1232; Mommsen, *Röm. Staatsr.* ii. 578; Karlowa, *Röm. Rechtsgesch.* i. 409; Greenidge, *Leg. Proced.* 317; p. 268.

[3] Cic. *Rep.* ii. 31. 54; Livy iii. 55. 4; cf. Mommsen, *Röm. Staatsr.* iii. 352, n. 2; Lange, *Röm. Alt.* i. 638; ii. 551; Greenidge, *Leg. Proced.* 318.

[4] Livy iii. 55. 14; cf. 54. 15.

[5] Livy iv. 13. 11 f.; vi. 16. 3 (385); vii. 4. 2 (362); viii. 33–35 (325; see p. 242, n. 5); Mommsen, *Röm. Staatsr.* ii. 164 f. with notes; *Röm. Strafr.* 476; Greenidge, *Leg. Proced.* 318; cf. p. 242.

[6] Livy x. 9. 4.

[7] Livy iii. 20. 7; Mommsen, *Röm. Staatsr.* i. 66 f.; iii. 352.

[8] Lange, *Röm. Alt.* ii. 543; Mommsen, ibid.

grant an appeal even by the Valerian law of 300, was to be deemed wicked.[1] Furthermore the oft-recurring dictatorship was unrestricted by the law, being in this respect a temporary restoration of the regal office.[2] Not till after the enactment of the last Valerian statute did the people begin to enjoy in fact the privilege which had long been constitutionally theirs. The enforcement of the law, as in general of the rights of the citizens, was chiefly due to the plebeian tribunate, "the only sure protection even of oppressed patricians,"[3] but itself a limitation on the jurisdiction of the assembly.[4] At some unknown date after 325[5] the dictator's authority within the city was subjected to appeal; and it has accordingly been suggested that this limitation was due to the Valerian law of 300.[6]

The practical establishment of the right of appeal ordinarily led the magistrate in the exercise of his disciplinary power to substitute light fines and imprisonment, which he had full power to enforce, for the heavier penalty of scourging.[7] But

[1] Livy x. 9. 5: "Improbe factum." This denunciation might involve penal consequences according to Greenidge, *Leg. Proced.* 319 f. Mommsen, *Röm. Strafr.* 167, 632 f., supposes the expression to signify that the offending magistrate was to be treated as a private person and punished for murder. Some are of the opinion that it involved loss of citizenship, whereas others suppose its effect was simply moral; cf. Karlowa, *Röm. Rechtsgesch.* i. 429.

[2] Livy ii. 18. 8; 30. 5; iii. 20. 8; viii. 33 (dictator permits appeal); Dion. Hal. v. 75. 2 f.; vi. 58. 2; Zon. vii. 13. 13; Pomponius, in *Dig.* i. 2. 2. 18; Lydus, *Mag.* i. 37; Mommsen, *Röm. Staatsr.* ii. 163, n. 1; Lange, *Röm. Alt.* i. 756 f.

[3] Livy ii. 55. 5; iii. 45. 8; 55. 6, 14; 56. 5; 67. 9; viii. 33. 7: "Tribunos plebis appello et provoco ad populum"; xxxvii. 51. 4; Dion. Hal. ix. 39. 1 f.; Mommsen, *Röm. Staatsr.* i. 277.

[4] Livy iii. 24. 7; 25. 2; 29. 6; Lange, *Röm. Alt.* i. 840; ii. 544.

[5] The appeal of Fabius from the jurisdiction of the dictator in 325 was granted not under compulsion but in grace; Livy viii. 35. 5. On the freedom of the dictatorship from this restriction in the period between 449 and 325, see p. 241, n. 5. The court mentioned by Livy ix. 26. 6 ff. (314) seems to have been an extraordinary quaestio under the presidency of a dictator; Mommsen, *Röm. Staatsr.* ii. 165, n. 6. On the subjection of his authority to appeal, see Fest. 198. 32: "Optima lex . . . in magistro populi faciendo, qui vulgo dictator appellatur, quam plenissimum posset ius eius esse significabat, ut fuit M'. Valerio M. f. Volusi nepotis, qui primus magister populi creatus est. Postquam vero provocatio ab eo magistratu ad populum data est, quae ante non erat, desitum est adici, 'ut optima lege,' utpote imminuto iure priorum magistrorum."

[6] Mommsen, *Röm. Staatsr.* ii. 165; Greenidge, *Leg. Proced.* 319.

[7] Cic. *Leg.* iii. 3. 6; Livy ii. 29. 4: "Ab lictore nihil aliud quam prendere prohibito"; ii. 55. 5; Dion. Hal. vi. 24. 2.

in case of crimes, especially perduellio and parricidium, public sentiment compelled him to prosecute the accused to the full extent of the law. In the former accusation the consul of the early republic appointed duumviri perduellioni iudicandae for each case as it arose.[1] This office is obscure because, without being formally abolished, it fell early into disuse, its function passing to the tribunate of the plebs. Of the three cases attributed by the sources to these duumviri, that of Horatius[2] belongs to the regal period, and is a mythical prototype of the republican procedure. The offence has the appearance of parricidium. Only by the broadest interpretation could perduellio be made to cover the murder of a sister.[3] The second case is that of M. Manlius, 384, according to the more credible account,[4] whereas Livy[5] himself is of the opinion that the prosecutors were the plebeian tribunes. We may conclude, then, that the duumviri were still employed at this date.[6] The third case is an unsuccessful attempt in 63 to revive the office for the trial of C. Rabirius.[7] The first republican law of appeal must have empowered the comitia to order the appointment of these officials by the magistrate;[8] and it seems probable that at a later date unknown to us they began to be elected by the

[1] Livy i. 26. 5: "Duumviros . . . qui . . . perduellionem iudicent secundum legem facio"; § 7: "Hac lege duumviri creati"; vi. 20. 12: "Sunt qui per duumviros, qui de perduellione anquirerent creatos auctores sint damnatum." Creare applies to appointments though less commonly than to elections; cf. Livy ii. 18. 4 f.; 30. 5; iv. 26. 6; Fest. 198. 4 (of the dictator); Livy iv. 46. 11; 57. 6 (of the magister equitum). In vi. 20. 12, quoted above, Livy may possibly be thinking of election, which seems to have become the rule before the disuse of the office; cf. Greenidge, *Leg. Proced.* 304, 309.

[2] Livy i. 26; Fest. 297. 11.

[3] *Dig.* xlviii. 4. 11: "Qui perduellionis reus est, hostili animo aduersus rem publicam uel principem animatus"; cf. Greenidge, *Leg. Proced.* 303.

[4] Livy vi. 20. 12; see n. 1 above.

[5] Ibid. vi. 19. 6 ff.

[6] Cf. Ihne, in *Rhein. Mus.* xxi (1866). 177.

[7] P. 258.

[8] This comitial resolution may be anticipated in the account of the process against Horatius given by Livy i. 26. 5: "Duumviros . . . secundum legem facio"; cf. § 7: "Hac lege duumviri creati." The king, whose judgments were absolute, could not have thus been forced; hence more probably lex in these phrases is not a comitial act but the formula of appointment; Greenidge, *Leg. Proced.* 356 and n. 1. The procedure in the trial of C. Rabirius was in this respect similar; a law compelling the praetor to appoint duumviri is suggested by Cic. *Rab. Perd.* 4. 12.

people.[1] The function of the duumviri was to try the case and pronounce sentence, from which if condemnatory the accused had a right to appeal to the comitia centuriata.[2] From the analogy offered by the questorian procedure we may infer that the duumviri requested from a higher magistrate permission to take auspices for that assembly, over which they presided in the final trial.[3]

All capital crimes committed by a citizen against another were in a similar way referred by the consuls to the quaestores parricidii as their deputies.[4] The activity of these officials is first mentioned by the annalists in connection with the trial of Sp. Cassius, not for murder but for perduellio.[5] Lange's[6] explanation that the quaestors were appointed duumviri for the trial would satisfy all requirements; yet in myths of this kind we need not expect absolute legal consistency.[7] According to another, perhaps even earlier, version he was tried and condemned at home by his father.[8] The second instance is the trial of M. Volscius, 459, for false testimony,[9] which was likewise a capital crime. Their judicial competence was recognized by the Twelve Tables;[10] and two capital cases are assigned to their jurisdiction after the decemvirate, (1) that of Camillus on an accusation variously stated by the ancient authorities;[11] he

[1] Dio Cassius, xxxvii. 27. 2, finds fault with the procedure against Rabirius on the ground that the duumviri for judging him were appointed by the praetor, not elected as they should have been "according to ancestral usage."

[2] Livy i. 26. 5; Pomponius, in *Dig.* i. 2. 2. 16; Cic. *Leg.* iii. 12. 27; Lange, *Röm. Alt.* ii. 544; Mommsen, *Röm. Staatsr.* ii. 617 f.

[3] P. 104. [4] Greenidge, *Leg. Proced.* 303–5.

[5] Cic. *Rep.* ii. 35. 60; Livy ii. 41. 11; Dion. Hal. viii. 77. 1; cf. Greenidge, *Leg. Proced.* 309. [6] *Röm. Alt.* i. 610; ii. 545.

[7] Cf. the trial of Horatius for murder by the duumviri perduellioni iudicandae; p. 243. [8] Livy ii. 41. 10. [9] Livy iii. 24. 3; 25. 2.

[10] Pomponius, in *Dig.* i. 2. 2. 23: "Quia . . . de capite civis Romani iniussu populi non erat lege permissum consulibus ius dicere, propterea quaestores constituebantur a populo, qui capitalibus rebus praeessent: his appellabantur quaestores parricidii, quorum etiam meminit lex Duodecim Tabularum"; cf. Fest. 258. 29; ep. 221.

[11] Pliny *N. H.* xxxiv. 4. 13: "Camillo inter crimina obiecerit Sp. Carvilius quaestor, quod aerata ostia haberet in domo." According to Livy v. 23. 11; 32. 8 f., it was misappropriation of the Veientan spoil. Diodorus, xiv. 117. 6, states that according to one report the accusation was that he had driven white horses in his triumph. The appeal was to the comitia centuriata; Cic. *Dom.* 32. 86. This case indicates

avoided capital prosecution before the centuries by retiring into exile, and in his absence was condemned by the tribes to a fine of 15,000 or perhaps 100,000 asses: (2) that of T. Quinctius Trogus brought by the quaestor M. Sergius,[1] which must have taken place after 242.[2] The reason for the fewness of the known cases is to be sought in the circumstance that their jurisdiction was substantially limited to common crimes, whereas political crimes came at first before the duumviri and afterward before the tribunes of the plebs.[3] The criminal jurisdiction of the quaestors must have continued till the institution of standing quaestiones.[4]

While the importance of the comitia centuriata as a criminal court was enhanced by the lex Valeria Horatia and the Duillian plebiscite of 449, which prohibited the election of a magistrate with absolute jurisdiction, the number of officials competent to bring capital actions before this assembly was increased as a result of that law of the Twelve Tables which enacted that all resolutions concerning the caput of a Roman citizen should be offered to the centuries only.[5] Thereafter the tribunes were required to prefer their capital accusations before this assembly, for the summoning of which they, like the quaestors and the duumviri perduellioni iudicandae, requested the auspices of a higher magistrate, ordinarily after 367 of a praetor.[6] For a time, probably till the Hortensian legislation, they were de-

either inconsistency in legal usage, quite possible in early time, or more probably the union of inconsistent traditions. The facts that Pliny mentions a quaestor apparently as prosecutor, not simply as witness (Lange, *Röm. Alt.* ii. 582), and that Cicero represents the trial as belonging to the centuries suffice to indicate a questorian prosecution before that assembly. Should we venture to bring consistency to so uncertain a story, we could suppose that in his absence, the tribunes, taking up the case, lightened the penalty to a fine.

[1] Varro, *L. L.* 90–92 (mutilated excerpts from the record of this trial, preserved in the *Commentaria Quaestorum* and containing part of the edict for summoning the assembly and the accused).

[2] That is, after the increase in the number of praetors; Lange, *Röm. Alt.* i. 884; ii. 551; Mommsen, *Röm. Staatsr.* ii. 543, n. 2.

[3] P. 243, 248.

[4] Cf. Mommsen, *Röm. Staatsr.* ii. 543 f.; Lange, *Röm. Alt.* i. 389, 884, 910; ii. 555.

[5] P. 241.

[6] Cf. Livy xxvi. 3. 9; xliii. 16. 11; Gell. vi. 9. 9; Karlowa, *Röm. Rechtsgesch.* i. 409.

pendent upon the patrician magistrates for this privilege.[1] According to our sources the tribunes, with the approval of the consuls,[2] entered upon their new sphere of judicial activity by bringing a capital charge against Appius Claudius and Sp. Oppius, past decemvirs, for misconduct in office, the specific charge being the abuse of justice in the interest of a person or of a party.[3] The suicide of the accused prevented the trial. On the eight remaining decemvirs they passed in the same assembly a sentence of exile.[4] M. Claudius, too, condemned for false testimony, was exiled, the death penalty being mitigated also in his case.[5] The tribunes of 439 are said to have accused L. Minucius and C. Servilius Ahala for the part they had taken in the death of Sp. Maelius, and two years afterward Servilius was sentenced to exile by the comitia centuriata, to be recalled later by the same body. The charge against the former was false testimony, against the latter the putting to death of a citizen who had not been legally sentenced.[6] Livy next mentions a charge, probably of perduellio, brought by the tribunes against Q. Fabius, 390, for having, in violation of the ius gentium, fought against the Gauls while he was an ambassador to them. He, too, is said to have died before the trial.[7] All these cases are uncertain. If historical, they may represent the beginnings of capital jurisdiction of the tribunes, in rivalry with the duumviri; or they may in reality, like the case of M. Manlius, 384, already mentioned, have been duumviral. On either alternative they came before the centuriate comitia.

[1] Cf. Herzog, *Röm. Staatsverf.* i. 196.

[2] Livy iii. 59. 4; Dion. Hal. xi. 49. 3.

[3] Livy iii. 56–8; Dion. Hal. xi. 46, 49.

[4] Livy iii. 58. 10; Dion. Hal. xi. 49; Zon. vii. 18. 11.

[5] Livy iii. 58. 10; Dion. Hal. xi. 46. 5; Gell. xx. 1. 53. False testimony in a case of this kind, which was vindicia not murder, was not capital; hence it did not ordinarily come before the tribunes; Mommsen, *Röm. Staatsr.* ii. 324, n. 6. The political importance of the case, however, was a sufficient motive to their undertaking it.

[6] Livy iv. 16. 5 f.; 21. 3 f.; Cic. *Dom.* 32. 86; *Rep.* i. 3. 6; Val. Max. v. 3. 2 g; Lange, *Röm. Alt.* i. 668; ii. 553. Roman law regarded false testimony in capital cases as murder; hence the prosecution of Minucius might legally have come before the quaestors; Mommsen, *Röm. Staatsr.* ii. 324, n. 6.

[7] Livy vi. 1. 6.

As we approach firmer historical ground, we hear of three accusations of unnatural lust alleged to have been brought by the tribunes of the plebs before the same comitia: (1) that against L. Papirius, 326,[1] (2) that against L. or M. Laetorius Mergus, a military tribune, quod cornicularium suum stupri causa appellasset,[2] (3) the case mentioned by Pliny and others against a person of unknown name, which probably belongs to this period.[3] The second case seems to be a trial of official accountability, which fell within tribunician jurisdiction according to the usage of historical time; the others are too little known to be legally formulated.

In this period falls the attempted prosecution of Appius Claudius Caecus, 310, on the ground that he had not laid down the censorship at the end of the limit of eighteen months.[4] The accusing tribune ordered him to be seized and imprisoned, but three colleagues interceded.[5] About the same time M. Atilius Calatinus was unsuccessfully prosecuted on a charge of having betrayed Sora,[6] probably in connection with the defection of that town to the Samnites in 315.[7]

In reviewing the cases said to have been brought by tribunes before the comitia centuriata it is surprising to find the period from the institution of the office to the trial of Q. Fabius, 390, swarming with such prosecutions, whereas for the century intervening between that date and the Hortensian legislation comparatively few cases are recorded and those of little significance.[8] These circumstances tend to prove that the cases assigned to the earlier and less known period either belong mostly to the jurisdiction of the duumviri or of the quaestors rather than of the tribunes, or are in great part mythical, and that the tribunes, therefore, exercised no extensive capital jurisdiction

[1] Livy viii. 28; Dion. Hal. xvi. 5 (9); Suid. s. Γάιος Λαιτώριος. Mommsen, *Röm. Staatsr.* ii. 325, n. 1, denies that a case of the kind could come before the tribunes.

[2] Dion. Hal. xvi. 4 (8); Val. Max. vi. 1. 11; Suid. ibid. This prosecution could be brought on the ground of misconduct of office; Mommsen, ibid.

[3] Pliny, *N. H.* viii. 45. 180; Val. Max. viii. 1. 8.

[4] Livy ix. 33. 4 f.

[5] Ibid. 34. 26.

[6] Val. Max. viii. 1. abs. 9.

[7] Livy ix. 23. 2; Mommsen, *Röm. Staatsr.* ii. 323, n. 5.

[8] The same thing is true of the finable actions of this period; p. 290.

before the enactment of the Hortensian law.[1] We are led thence to the conclusion that either by an article of the statute of Hortensius or at least as a recognized consequence of the high place in the government assured the tribunes by it, the jurisdiction of these magistrates in political cases was freed from every restraint. At this time they succeeded wholly to the place of the duumviri. The cases of which the tribunes had cognizance were thereafter exclusively political, whereas the questorian jurisdiction was confined to murder and other common crimes. This distinction was not a limitation upon the power of the tribunes, who if they chose might have superseded the quaestors as easily as they had superseded the duumviri. It was rather a division of functions adopted by the tribunes themselves in view of their own political character and on the basis of the relative dignity of the two offices. The chief judicial function of the tribunes, accordingly, was to hold officials responsible for their administration, though occasionally they called private persons to account for their conduct as citizens. All grades of officials were within their jurisdiction, but most of the cases were against the higher magistrates.

The first tribunician case of the kind after the Hortensian legislation, and the first which is absolutely free from historical doubt, is that brought against P. Claudius Pulcher on the ground that as consul, 249, he fought the naval battle off Drepana contrary to auspices, thereby losing his fleet. After the comitia had been interrupted by a storm, the intercession of colleagues against the resumption of the trial saved him from the death penalty. As the result of a new trial before the tribes, however, he was fined 120,000 asses, 1000 for each ship lost.[2] His colleague, L. Junius, by suicide escaped condemnation on a charge of perduellio.[3] In 212 two tribunes of the plebs prose-

[1] This view has no other warrant than the uncertainty of our sources for the fifth and early fourth centuries B.C. That the tribunes should make early gains in jurisdiction, to be afterward partially lost, is thoroughly consistent with the law of plebeian progress, which consisted, not in a steady forward movement, but in successive advances and retreats.

[2] Livy, ep. xix; Cic. *Div.* ii. 33. 71; *N. D.* ii. 3. 7; Polyb. i. 52. 1–3; Schol. Bob. 337; Val. Max. viii. 1. abs. 4; Lange, *Röm. Alt.* ii. 556; Mommsen, *Röm. Staatsr.* ii. 321, n. 1; iii. 357, n. 1; p. 317 below.

[3] Cic. *Div.* ii. 33. 71; *N. D.* ii. 3. 7; Val. Max. i. 4. 3.

cuted M. Postumius Pyrgensis, a publican, before the tribes for fraud, setting the penalty at 200,000 asses; but the accused with his friends violently broke up the assembly, whereupon the tribunes, dropping the original charge, prosecuted him for perduellio,[1] we should suppose before the centuries.[2] Among the complaints urged against him by the consuls in the senate were that "he had wrested from the Roman people the right of suffrage, had broken up a concilium plebis, had reduced the tribunes to the rank of private persons, had marshalled an army against the Roman people, seized a position, and cut the tribunes off from the plebs, and had prevented the tribes from being called to vote." Specifically the crime must have been perduellio.[3] Before the day of trial he withdrew into exile. In his absence the plebs on the motion of Sp. and L. Carvilius decreed that he was legally in banishment, that his property should be confiscated, and that he should be interdicted from fire and water. In this connection it should be noticed that whereas the banishment of a citizen by lex or iudicium was the exclusive right of the centuries,[4] the tribes were competent to decree him an exile after his voluntary retirement.[5] Some of the coadjutors in the violence of the publican above mentioned left their bail and followed him into exile; others were imprisoned to await capital trial, with what result the historian does not inform us.[6]

In the same year Cn. Fulvius, a praetor, met with military reverses through gross cowardice,[7] and in the following was prosecuted in a finable action by a tribune of the plebs for having corrupted his army by the example of his unsoldierly habits. Finding in the course of the trial that the fault of the magistrate was far more serious than had been imagined, and that the people were in a temper to vote the extreme penalty, the prosecutor

[1] P. 318.

[2] Greenidge, *Leg. Proced.* 328 f., wrongly assumes that in this case the charge of perduellio came before the tribes; the interdiction of the man by the tribes after his departure was not a iudicium but a lex.

[3] Cf. Mommsen, *Röm Staatsr.* ii. 299.

[4] P. 241.

[5] P. 267, 446.

[6] Livy xxv. 3 f.

[7] Livy xxv. 20. 6 ff.; p. 318, n. 8 below. Livy gives us to understand that defeat resulting from ignorance or temerity could not be made a ground of prosecution.

changed the form of accusation to perduellio on the ground that such cowardly conduct in a commander threatened the existence of the state. In this instance, too, the accused avoided trial by withdrawing into exile.[1] In 204 by a decree of the senate a special commission, consisting of the praetor for Sicily with a council of ten senators,[2] was appointed for the trial of a legate of Scipio, Q. Pleminius, on the charge that he had robbed the temple of Persephone in Locri and had violently oppressed the Locrians.[3] The commission brought him and his accomplices in chains to Rome and cast them in prison to await their trial for life before the centuries.[4] The day of trial was continually deferred, till finally Pleminius, now charged with the instigation of a plot to burn the city, was put to death in prison.[5] The fate of his accomplices is unknown.[6] Livy[7] remarks that while Pleminius was languishing in jail the wrath of the populace gradually changed to sympathy, to such an extent doubtless as to convince the authorities of their inability to secure a popular verdict in favor of the death penalty. In fact since the death of M. Manlius Capitolinus, 384, no example of the execution of a death sentence pronounced by the assembly is recorded in history.[8] But the magistrate probably often inflicted corporal punishment in violation of the third Valerian law. To put an end to this abuse, and at the same time to embody in legal form the popular feeling against the application of the death penalty to citizens, a Porcian law absolutely forbade the scourging or slaying of a citizen under the imperium domi, the article pro-

[1] Livy xxvi. 2. 7 through ch. 3 ; Mommsen, *Röm. Staatsr.* ii. 320, n. 2, 321, n. 2 ; Lange, *Röm. Alt.* ii. 556; Greenidge, *Leg. Proced.* 329 f. On the right to change the form of action, see p. 287.

[2] The two plebeian tribunes and the aedile who accompanied this commission were sent to recall Scipio, should he be found responsible for the conduct of his legate ; Livy xxix. 20. 11. They do not seem to have been members of the commission.

[3] Livy xxix. 8. 6 ff. ; chs. 16–22.

[4] Livy xxix. 19. 5; 22. 7. The form of comitia is inferred from the circumstances.

[5] Livy xxxiv. 44. 7 f.

[6] Livy xxix. 22. 8 f. (cf. xxxi. 12. 2); Diod. xxvii. 4 ; cf. Val. Max. i. 2. 21; Appian, *Hann.* 55.

[7] XXIX. 22. 8.

[8] Lange, *Röm. Alt.* ii. 557. The date of the execution of C. Veturius in pursuance of a vote of the people (Plut. *C. Gracch.* 3) is unknown.

hibiting the sentence of death being afterward reënforced by other enactments.[1] There has been much discussion as to the authorship of this law; probably it was the work of M. Porcius Cato the Elder in his praetorship, 198.[2] Another Porcian law, probably of P. Porcius Laeca, praetor in 195, extended the right of appeal to Roman citizens who were engaged in the affairs of peace outside the city, in Italy and the provinces, and were therefore under the military imperium.[3] According to this law the citizen who appealed was sent to Rome for trial by the appropriate civil authorities. Still later the third Porcian law, which Lange[4] conjecturally assigns to L. Porcius Licinus, consul in the year of the elder Cato's censorship, 184, seems to have been passed for the benefit of Roman soldiers. We learn from Polybius,[5] who wrote later than the date last mentioned, that the military tribunes were accustomed in court-martial to condemn common soldiers for neglect of sentinel duty and that the condemned were cudgeled and stoned, often to death, by their fellow-soldiers. He also speaks of the punishment of entire maniples by decimation. Under Scipio Aemilianus, 133, the Roman who neglected duty was flogged with vine stocks, the

[1] Sall. *Cat.* 51. 21 f.: "Quamobrem in sententiam non addidisti, ut prius verberibus in eos animadvorteretur? An quia lex Porcia vetat? At aliae leges item condemnatis civibus non animam eripi sed exilium permitti iubent"; 51. 40: "Postquam res publica adolevit et multitudine civium factiones valuere, circumvenire innocentes, alia huiusce modi fieri coepere, tum lex Porcia aliaeque paratae sunt, quibus legibus exilium damnatis permissum est"; Cic. *Rab. Perd.* 3. 8: "De civibus Romanis contra legem Porciam verberatis aut necatis"; Pseud. Sall. *in Cic.* i. 5: charges against Cicero that in putting Roman citizens to death he has abolished the lex Porcia. Livy x. 9. 4: "Porcia tamen lex . . . gravi poena, si quis verberasset necassetve civem Romanum, sanxit"; cf. Cic. *Rab. Perd.* 4. 12 f.; *Verr.* v. 63. 163; Gell. x. 3. 13. Greenidge, *Leg. Proced.* 320, doubts whether it allowed exile to one condemned by a vote of the people. Against him is Polyb. vi. 14. 7, quoted p. 217, n. 5.

[2] Livy xxxii. 7. 8; Fest. 234. 10; The opinion here given is that of Lange, *Röm. Alt.* ii. 205, 558. A different view is represented by Orelli-Baiter, Cic. *Op.* viii. 3. 252 f.

[3] The decisive evidence is a coin, described by Mommsen, *Röm. Münzwesen*, 552, representing an armed man evidently in the act of condemning a civilian, whose appeal is indicated by the word PROVOCO beneath. The inscription on the obverse P. LAECA reveals the author of the law.

[4] *Röm. Alt.* i. 249; ii. 559.

[5] VI. 37 f.

foreigner with cudgels.[1] Cicero[2] intimates that in his own time there was no appeal from the judgment of commanders; and in fact it is impossible to understand how discipline could otherwise be maintained. Evidence to the contrary is scant and uncertain. The person against whom an accusation of desertion was brought before the tribunes of the plebs in 138 seems to have claimed to be a civilian, and on that ground appealed to the tribunes. When proved guilty he was flogged and sold as a slave, probably by a judgment of the military authorities.[3] In 122 Livius Drusus proposed to exempt Latin soldiers from flogging.[4] While informing us that in 108 a commander had a right to scourge and put to death a Latin official, Sallust[5] intimates that he had less authority over a Roman. In the time of the emperors, on the other hand, soldiers were subject to the death penalty as in the time of Polybius.[6] All these circumstances may be best explained by supposing that the third Porcian law permitted the infliction of flogging and death on Roman soldiers by the judgment only of a court-martial.[7] This difficult subject is further complicated by the statement of Cicero[8] that the three Porcian statutes introduced nothing new excepting by way of penalty. Interpreted in the light of other information given by various authors, including Cicero himself, these statutes simply extended the right of appeal by adapting the Valerian principle to new conditions, and substituted exile in

[1] Livy, ep. lvii; cf. Cic. *Rep.* i. 40. 63: "Noster populus in bello sic paret ut regi."

[2] *Leg.* iii. 3. 6: "Militiae ab eo qui imperabit provocatio nec esto," which however, Mommsen, *Röm. Staatsr.* ii. 117, n. 2 (cf. *Röm. Strafr.* 31, n. 3) sets down as merely a pious wish of the author.

[3] Livy, ep. lv: (In the consulship of P. Cornelius Nasica and D. Junius Brutus) "C. Matienus accusatus est apud tribunos plebis, quod exercitum in Hispania deseruisset, damnatusque sub furca diu virgis caesus est, et sestertio nummo veniit." The new epitome, l. 207–9, speaks of desertores who on this occasion were thus flogged and sold. It is not known that the tribunes tried cases of desertion or that they inflicted the kind of punishment here described. C. Titius, sent for trial to the tribunes on the charge of having stirred up a mutiny (Dio. Cass. Frag. 100; year 89), may have been a civilian.

[4] Plut. *C. Gracch.* 9.

[5] *Iug.* 69.

[6] Modestinus, in *Dig.* xlix. 16. 3. 15; Menander, ibid. 16. 6. 1 f.

[7] An example of a military consilium is given by Livy xxix. 20 f.

[8] *Rep.* ii. 31. 54: "Neque vero leges Porciae, quae tres sunt trium Porciorum, ut scitis, quicquam praeter sanctionem attulerunt novi."

place of scourging and death. In the relation between the accused and the civil court the cry "civis Romanus sum" was thereafter a sufficient protection from bodily injury.[1]

In the period to which the Porcian laws belong falls the accusation of perduellio brought by the tribune P. Rutilius Rufus against the censors C. Claudius and Ti. Sempronius Gracchus, while they were in office, 169. The charge against Gracchus was disregard of the tribunician auxilium, against his colleague the interruption of a concilium plebis (quod contionem ab se avocasset). The accused, foregoing the privilege of their magistracy, consented to a trial, which came before the comitia centuriata. Claudius narrowly escaped condemnation, whereupon the case against Gracchus was dropped.[2]

The increasing number of special judiciary commissions and the institution of standing courts limited more and more the judicial activity of the centuriate assembly; but the tribunes of the plebs kept alive the feeling of popular sovereignty in this sphere by the occasional prosecution of some notorious offender.[3] The continuance of the centuriate judicial function is proved by the Cassian plebiscite of 137, which provided for the use of the ballot in all iudicia populi excepting in perduellio,[4] and by the lex Caelia, 108, which removed the exception.[5]

The limitation upon popular jurisdiction by the special court is said to have begun as early as 414, when, according to Livy,[6] a senatus consultum authorized the appointment of a quaestio extraordinaria to discover and punish the murderers of M. Postumius, a tribune of the soldiers with consular power. The plebs, consulted as to the presidency of the court, left it to the consuls. The instance may be an anticipation of later usage. The case of wholesale poisoning by Roman matrons, 331, was investigated, and a hundred and seventy matrons were condemned, by an extraordinary court, which evidently owed its existence to a senatus consultum without the coöperation of

[1] Cic. *Verr.* v. 62. 162.

[2] Livy xliii. 16. 8 ff.

[3] Polyb. vi. 14. 6; cf. Lange, *Röm. Alt.* ii. 560.

[4] Cic. *Brut.* 25. 97; 27. 106; *Leg.* iii. 16. 37; *Sest.* 48. 103; Schol. Bob. 303; Cic. Frag. A. vii. 50; Ascon. 78; Pseud. Ascon. 141 f.; Orelli-Baiter, Cic. *Op.* viii. 3. 278 f.

[5] Cic. *Planc.* 6. 16.

[6] IV. 50. 6 ff.

the people.[1] The same is true of the quaestio appointed by the senate under dictatorial presidency in 314 to inquire into charges of conspiracy of the leading men in certain allied states. The dictator extended the inquiry to Rome, and after his resignation the consuls continued the work. Livy's account of this affair assumes that the senate had full power to appoint such commissions.[2] It did in fact possess the right without the coöperation of the people to institute quaestiones extraordinariae for the trial of allies or other aliens in crimes which menaced the security of Rome. In the period between the Hortensian legislation and the Gracchi in two recorded instances it dared on its own responsibility to appoint such courts for the trial of citizens.[3] These were usurpations; for as the laws of appeal forbade the putting to death of a citizen unless condemned by the people, a special court with capital jurisdiction over citizens could not be constitutionally established excepting with the consent of the assembly. This right of the people was considered a legislative equivalent of their judicial power, which the vast expansion of their state made it impossible for them directly to exercise.[4] The court which tried and condemned the insurgent garrison of Rhegium in 270 was instituted accordingly by a plebiscite authorized by a senatus consultum.[5] Most probably the court in this case was the senate itself, just as in 210, when the plebiscite of L. Atilius gave it full power to judge and punish the Campanians for revolt.[6] The appointment of special courts for the detection and punishment of aliens for illegal usurpation of the citizen-

[1] Livy viii. 18; Val. Max. ii. 5. 3.

[2] IX. 26.

[3] (1) In 186 for the trial of the Bacchanalians (Livy xxxix. 8–19); (2) in 180 two courts for the detection and trial of poisoners in Rome and Italy (Livy xl. 37). The two courts established in 186 for the trial of poisoners and for putting down the last of the Bacchanalians are mentioned by Livy xxxix. 41 without a hint as to the manner of their appointment; cf. Greenidge, *Hist. of Rome*, i. 135, n. 4.

[4] Polyb. vi. 16. 2; Cic. *Dom.* 13. 33.

[5] Dion. Hal. xx. 7. Though no mention is here made of a quaestio extraordinaria, we may assume one for every such instance. In actual iudicia populi the senate had no part.

[6] Livy xxvi. 33 f.

ship, which belonged originally to the senate, began in 177 to be shared by the people.[1]

Similar in character to the special judiciary commission appointed by the senate, but far more sweeping in effect, was the senatus consultum ultimum ("videant consules, ne quid respublica detrimenti capiat"), which in crises armed the consuls with absolute power of life and death over the citizens.[2] By these means the senate at its pleasure circumvented the laws of appeal on the plea that the accused had ceased to be citizens.[3] Against this abuse Ti. Gracchus planned a new law of appeal, which he did not live to see enacted.[4] His own followers were ruthlessly condemned without the privilege of appeal by an extraordinary quaestio under P. Popillius Laenas, consul in 132.[5] Probably a similar court was appointed after the revolt of Fregellae.[6] To put an end to such circumvention of a well-established right of the people, C. Gracchus in his first tribunate, 123, carrying into effect the plan of his brother, passed the often mentioned lex Sempronia de provocatione, which absolutely forbade capital sentence upon a citizen without an order

[1] The following pre-Gracchan quaestiones extraordinariae, according to our authorities, owed their existence to a popular vote. (1) The lex de pecunia regis Antiochi of the two Q. Petilii, tribunes in 185, for the establishment of a special court to try L. Scipio Asiagenus and some others for the misappropriation of public money; Livy xxxviii. 54, p. 399 below. — (2) The plebiscite of M. Marcius Sermo and Q. Marcius Scylla, tribunes in 172, directed the senate to establish a special court for the trial of M. Popillius on the charge of having unjustly subjugated and enslaved the Ligurians; Livy xlii. 21. 5. — (3) By the lex Caecilia, 154, a special quaestio repetundarum was established for the trial of L. Lentulus, retired consul of 156; Val. Max. vi. 9. 10. — (4) Another special court for the trial of L. Hostilius Tubulus on the charge of having accepted bribes while president of a murder court (quaestio inter sicarios) was ordered by a plebiscite of P. Mucius Scaevola in 141, whereupon the accused went into exile; Cic. *Fin.* ii. 16. 54; iv. 28. 77; v. 22. 62; *N. D.* i. 23. 63; iii. 30. 74; *Att.* xii. 5 b; Ascon. 22; Mommsen, *Röm. Strafr.* 197.

[2] Lange, *Röm. Alt.* i. 728. The formula varied with the occasion, and other magistrates were often associated with the consuls in this supreme power.

[3] Cic. *Cat.* i. 11. 28: "Numquam in hac urbe, qui a re publica defecerunt, civium iura tenuerunt"; Mommsen, *Röm. Staatsr.* iii. 359; Lange, *Röm. Alt.* ii. 560.

[4] Plut. *Ti. Gracch.* 16; p. 368 below. The idea of Tiberius is to be inferred from the law which his brother afterward passed.

[5] Plut. *C. Gracch.* 4; Cic. *Lael.* 11. 37; *CIL.* i². p. 148.

[6] Plut. *C. Gracch.* 3; cf. Greenidge, *Hist. of Rome*, i. 172.

of the people.[1] The wording indicates that it was intended not to do away with extraordinary courts and powers, but to allow their establishment in no other way than by popular vote.[2] It reiterated, too, the article of the Porcian statute which absolutely forbade the infliction of the death penalty on civilians.[3] Far, however, from transferring the jurisdiction of the assembly to the quaestiones, the Sempronian law evidently confirmed the right of the people by enacting that the tribunes might bring the violator of that law before the comitia on a charge of perduellio, for which it mentioned the penalty of interdict from fire and water.[4] It held responsible not only the magistrate charged with the extraordinary commission, but probably also the senator who moved or supported the measure which called it into being.[5] The entire Sempronian law was made retroactive, so as to cover the case of Popillius, who thereupon fled into exile to avoid trial. The interdict was accordingly decreed by the tribes on the motion of Gaius.[6] Rupilius, the colleague of Popillius, seems to have suffered a similar punishment.[7]

In 120 the tribune Decius prosecuted for perduellio L. Opimius, who, as consul in 121, armed with the senatus consultum ultimum, had caused the death of C. Gracchus. The accused was acquitted.[8] Ihne[9] considers this prosecution to have been

[1] Cic. *Rab. Perd.* 4. 12: "C. Gracchus legem tulit, ne de capite civium Romanorum iniussu vestro iudicaretur"; *Cat.* iv. 5. 10; *Verr.* v. 63. 163; *Sest.* 28. 61; Schol. Gronov. 412: "Lex Sempronia iniussu populi non licebat quaeri de capite civis Romani"; Schol. Ambros. 370; Plut. *C. Gracch.* 4; p. 371 below.

[2] For examples of special courts afterward instituted, see p. 390.

[3] Sall. *Cat.* 51. 40; Cic. *Cat.* i. 11. 28; iv. 5. 10.

[4] Cic. *Dom.* 31. 82 f.; Plut. *C. Gracch.* 4; cf. Lange, *Röm. Alt.* ii. 561. It is not probable, as Greenidge, *Leg. Proced.* 330; *Hist. of Rome*, i. 201, has assumed, that the Sempronian law transferred jurisdiction in such cases from the centuries to the tribes. The comitia tributa had long exercised the right to condemn those who had fled into exile to avoid trial; p. 249, 267, 257, n. 5 (3).

[5] Cic. *Sest.* 28. 61; cf. Dio Cass. xxxviii. 14. 5; Greenidge, *Hist. of Rome*, i. 200 f.

[6] Cic. *Dom.* 31. 82; *Leg.* iii. 11. 26; cf. *Cluent.* 35. 95; Herzog, *Röm. Staatsverf.* i. 465.

[7] Vell. ii. 7. 4.

[8] Livy, ep. lxi: "Quod indemnatos cives in carcerem coniecisset" (Mommsen reads "in carcere necasset" or "in carcerem coniectos necasset"; *Röm. Staatsr.* ii. 111, n. 1); Cic. *Part. Or.* 30. 104, 106; *Orat.* ii. 25. 106; 30. 132; Lange, *Röm. Alt.* ii. 562; iii. 50; Greenidge, *Hist. of Rome*, i. 278–80.

[9] *History of Rome*, v. 5–7. His view is an inference from the circumstances.

instigated by the optimates in order to settle once for all and in their favor the question as to the legality of special courts which were called into being by an act of the senate alone. In that case acquittal was a foregone conclusion. In 119 the popular party met with greater success in the prosecution of C. Papirius Carbo, whom it hated as a renegade.[1] The charge was probably perduellio, though the details are unknown.[2]

The jurisdiction of the comitia in criminal cases suffered more extensive curtailment from the standing courts, — quaestiones perpetuae, — the first of which was established in 149 for the trial of Roman officials accused of extortion — repetundae — committed in the provinces or in Italy.[3] As the object of the prosecutors was in the main the recovery of extorted property, the court was essentially civil, and seemed, therefore, to the Romans no infringement of popular rights; yet even before Sulla the principle began to apply to distinctly criminal cases.[4] Notwithstanding this development several accusations were brought before the centuriate assembly in the period between the Gracchi and Sulla.[5] The latter increased the number

[1] The prosecutor was L. Crassus; Cic. *Brut.* 43. 159; cf. *Orat.* i. 10. 40; ii. 40. 170; *Verr.* II. iii. 1. 3; Val. Max. vi. 5. 6.

[2] Valerius Maximus, iii. 7. 6, assumes that the accused went into exile; Cicero, *Fam.* ix. 21. 3, informs us of a rumor that he committed suicide. Both reports may be true; Greenidge, *Hist. of Rome*, i. 282; cf. Lange, *Röm. Alt.* iii. 51.

[3] P. 358. [4] Mommsen, *Röm. Staatsr.* ii. 223 ff.

[5] (1) After the case against Carbo may be mentioned the accusation of perduellio against C. Popillius Laenas, 107, on the ground of a disgraceful surrender to the Tigurini. It was on this occasion that the ballot was first used in a trial for perduellio. The accused seems to have been condemned to exile; Cic. *Leg.* iii. 16. 36; *Herenn.* i. 15. 25; iv. 24. 34; Oros. v. 15. 24. This case, which resembles those of far earlier time, has nothing to do with violation of the right of appeal; (Cic.) *Herenn.* ibid. — (2) Similar in this respect was the prosecution of Q. Fabius Maximus Servilianus for the murder of his son. The accused went into exile before judgment was pronounced; Oros. v. 16. 8; Val. Max. vi. 1. 5. — (3) More famous is the prosecution of Q. Caecilius Metellus Numidicus, 100, by L. Appuleius Saturninus because the former refused to swear to maintain the agrarian law of the latter. Technically the charge was that Metellus refused to do his duty as a senator. The accused withdrew into exile before the trial, whereupon, by vote of the assembly, he was interdicted from fire and water; Livy, ep. lxix; Appian, *B. C.* i. 31. 137–40; Cic. *Dom.* 31. 82; *Sest.* 16. 37; 47. 101. — (4) Decianus, tribune of the plebs, 97, in accusing P. Furius, tribune of the preceding year, let fall some complaint regarding the murder of Saturninus, and on that ground was accused, probably by a tribune of the plebs, and condemned to exile; Cic. *Rab. Perd.* 9. 24; Schol. Bob. 230. —

of quaestiones to seven and brought all crimes within their cognizance. The questorian jurisdiction in cases of murder had already passed to the quaestio inter sicarios, established between 149 and 141;[1] and now Sulla transferred cases of perduellio from the jurisdiction of the tribunes to the quaestio maiestatis.[2] Although restored to the tribunes in 70, it was for the remainder of the republican period exercised by them on special occasions only, for the quaestio maiestatis still existed. With the establishment of the principate the jurisdiction of the people finally vanished.[3]

The revolutionary character of the period after Sulla is illustrated by the case of perduellio against C. Rabirius[4] brought in 63 by a tribune of the plebs, T. Atius Labienus. Rabirius was charged with complicity in the murder of L. Appuleius Saturninus, the famous tribune of the year 100. Labienus proposed and carried a plebiscite requiring the praetor to appoint duumviri for the trial, whereas it was generally held at the time that these officials should have been elected by the people. It was also enacted, in violation of the Porcian and Sempronian laws, that in case of conviction the accused should be crucified on the Campus Martius. C. and L. Caesar, appointed duumviri, brought the case before the comitia centuriata, which were prevented from giving their verdict by the removal of the flag from Janiculum.[5] The object of the trial was not to

(5) The prosecution of M. Aemilius Scaurus for maiestas by Q. Varius, tribune, Dec. 91, was withdrawn in the second anquisitio; Ascon. 19, 21 f.; (Aurel. Vict.) *Vir. Ill.* 72. 11; Quintil. v. 12. 10; Cic. *Scaur.* 1, 3; *Sest.* 47. 101. — (6) L. Cornelius Merula and Q. Lutatius Catulus, 87, avoided trial, probably for perduellio, by suicide; Diod. xxxviii. 4; Appian, *B. C.* i. 74. 341 f. — (7) On the first day of the following year, 86, P. Popillius Laenas, tribune of the plebs, hurled from the Tarpeian Rock Sextus Lucilius (or Licinius?), tribune of the preceding year, and set a day of trial for the colleagues of the latter. The accused fled to Sulla and in their absence were interdicted from fire and water. They were charged with perduellio; their offence was the veto of the popular measures of Cornelius Cinna. This is the only certain case of calling retired tribunes to account for their official conduct, and may be regarded as a symptom of the revolution then in progress; Vell. ii. 24; Livy, ep. lxxx; Dio Cass. Frag. 102. 12; Plut. *Mar.* 45.

[1] P. 255, n. 1 (4).

[2] Cic. *Verr.* i. 13. 38; cf. Mommsen, *Röm. Staatsr.* ii. 326.

[3] Dio Cass. lvi. 40. 4; Mommsen, *Röm. Staatsr.* ii. 326; iii. 359 f.

[4] P. 243.

[5] P. 203, n. 2.

punish the guilty, but to discredit the senate, to which the accused belonged.[1] The decline of the idea of popular sovereignty is further indicated by the agrarian rogation of the tribune P. Servilius Rullus, 63, an article of which, in violation of the lex Valeria Horatia de provocatione, ordered the appointment of decemviri agris adsignandis without appeal.[2]

The procedure was the same in all finable and capital actions. In a case subject to appeal the magistrate, after a preliminary inquiry (quaestio), summoned the people to contio on the third day[3] for a thorough examination (anquisitio).[4] The trumpeter blew his horn before the door of the accused, and cited him to appear at daybreak in the place of assembly.[5] Acting as accuser, the magistrate addressed the contio and produced his witnesses. Then came the witnesses for the defence, the statement of the accused, and the pleading of his counsel. These proceedings filled three contiones separated from one another by a day's interval. At the end of the third day's session the magistrate acquitted the accused or condemned him and fixed the penalty. In case of condemnation, the accused if dissatisfied appealed. The magistrate then put his sentence in the form of a rogation and set a date for the comitia,[6] which could be held only after an interval of a trinum

[1] Cic. *Rab. Perd.;* Dio Cass. xxxvii. 26 ff.; Suet. *Caes.* 12; Lange, *Röm. Alt.* ii. 563 f.; iii. 240; Drumann-Gröbe, *Gesch. Roms*, iii. 150–5; Wirz, in *Jahrb. f. Philol.* xxv (1879). 177–201. In the opinion of Mommsen, *Röm. Staatsr.* ii. 298, n. 3; 615, n. 2, following Niebuhr, a tribunician accusation involving a fine was then introduced, and the oration of Cicero was delivered in this second trial. Drumann-Gröbe, ibid.; Greenidge, *Leg. Proced.* 357 f.; Schneider, *Process des Rabirius* (Zürich, 1899), and others maintain that Cicero spoke in the trial conducted by the duumviri and that after it was dropped no further accusation was brought. Wirz, ibid., supposes that the senate quashed the process of the duumviri on the ground of illegality, that the accuser (Labienus) then brought a tribunician accusation for perduellio, but intimated a possible finable action in addition, and that the trial was ended, without resumption, by the hauling down of the flag.

[2] Cic. *Leg. Agr.* ii. 13. 33: "Orbis terrarum gentiumque omnium datur cognitio sine consilio, poena sine provocatione, animadversio sine auxilio"; p. 435.

[3] Cic. *Har. Resp.* 4. 7.

[4] Anquisitio seems to mean an examination on both sides — including testimony for and against the accused; Fest. ep. 22; Greenidge, *Leg. Proced.* 345, n. 3.

[5] Varro, *L. L.* vi. 91 f.

[6] Cic. *Dom.* 17. 45: "Cum tam moderata iudicia populi sint a maioribus constituta . . . ne inprodicta die quis accusetur, ut ter ante magistratus accuset intermissa

nundinum,[1] unless the accused desired an earlier trial.[2] Some scholars, however, hold the theory that a magistrate, recognizing the limitation of his competence, might bring the case directly to the comitia without the formality of a condemnation and appeal.[3] The penalty proposed in the rogation was not necessarily the same as at first announced; for the trial might bring to light facts to mitigate or to aggravate the sentence. The presentation of the case to the comitia by the magistrate was termed the fourth accusation.[4] If anything prevented the voting in the comitia, the accused was discharged,[5] and could not be legally brought to trial again for the same offence excepting under a different form of action.[6]

Schulze, C. F., *Volksversammlungen der Römer*, 307–40; Hüllmann, K. D., *Staatsrecht des Altertums*, 334–54; Huschke, Ph. E., *Verfassung des Königs Servius Tullius*, chs. vii, xi; Wöniger, A. T., *Sacralsystem und das Provocationsverfahren der Römer;* Peter, C., *Epochen der Verfassungsgeschichte der röm. Republik, mit besonderer Berücksichtigung der Centuriatcomitien und der mit diesen vorgegangenen Veränderungen; Studien zur röm. Geschichte*, 54 ff.; Schwegler, A., *Röm. Geschichte*, see index, s. Centuriatcomitien; Ihne, W., *History of Rome*, iv. 10 ff.; Mommsen, *Röm. Staatsrecht*, iii. 300 ff.; *Röm. Strafrecht*, 151–74, 473–8, 632–5; Mommsen and others, *Zum ältesten Strafrecht der Kulturvölker*, especially 31–51 by H. F. Hitzig; Lange, L., *Röm. Altertümer*, ii. 516–33, 541–65, 597–613, see also indices of vols. i–iii, s.v.; Madvig, J. N., *Verfassung und Verwaltung des röm. Staates*, i. 226–34; Herzog, E., *Geschichte und System der röm. Staatsverfassung*, i. 1068–1119, see also index, s.v.; Willems, P., *Droit public Romain*, 159 f., 172, 176 ff.; Mispoulet, J. B., *Institutions politiques des*

die, quam multam inroget aut iudicet, quarta sit accusatio trinum nundinum prodicta die, quo die iudicium sit futurum, tum multa etiam ad placandum atque ad misericordiam reis concessa sint, deinde exorabilis populus, facilis suffragatio pro salute, denique etiam, si qua res illum diem aut auspiciis aut excusatione sustulit, tota causa iudiciumque sublatum sit."

[1] The trinum nundinum, which included three market days (Macrob. *Sat.* i. 16. 34), could not have contained less than seventeen days or more than twenty-four.

[2] Livy, xliii. 16. 11.

[3] E.g. Greenidge, *Leg. Proced.* 306, 344. The theory has little in its favor and is not generally accepted; cf. Mommsen, *Röm. Strafr.* 167 f.

[4] On the quarta accusatio, see Cic. *Dom.* 17. 45, quoted p. 259, n. 6. An example of the mitigation of a capital to a finable action is the case against T. Menenius for the mismanagement of a campaign which he had conducted as consul; Livy ii. 52. 3–5 (476). Two examples of change in the form of action in the opposite direction are given on p. 249 f.

[5] Cic. *Dom.* 17. 45, quoted p. 259, n. 6.

[6] Cf. the case of Appius Claudius Pulcher, p. 248.

Romaines, i. 203–7; *Études d'institutions Romaines*, 63–6; Liebenam, W., *Comitia* II, in Pauly-Wissowa, *Real-Encycl.* iv. 686–700; Humbert, G. (s. *Comitia*), in Daremberg et Saglio, *Dict.* i. 1378 f.; Voigt, M., *XII Tafeln*, i. 673–82; ii. 781–845; Karlowa, O., *Röm. Rechtsgeschichte*, i. 409; Girard, P. F., *Histoire de l'organisation judiciaire des Romains*, i. 104–59; Usener, H., *Italische Volksjustiz*, in *Rhein. Mus.* lvi (1901). 1 ff.; Müller, A., *Strafjustiz im röm. Heere*, in *N. Jahrb. f. kl. Altertum*, xvii (1906). 550–77; Vassis, Sp., *Leges valeriae de provocatione*, in *Athena*, xvii (1905). 160–5; Küspert, O., *Ueber die Bedeutung und Gebrauch des Wortes 'Caput' im älteren Latein*; Dupond, A., *De la constitution et des magistratures Romaines sous la république*, 67–74; Moye, M., *Élections politiques sous la république Romaine*; Hallays, A., *Comices à Rome*, ch. ii; Morlot, E., *Comices électoraux*, ch. vi; Kappeyne van de Coppello, J., *Comitien*, 105–7; Borgeaud, C., *Histoire du plébiscite*, 45–57; Pantaleoni, D., *Della auctoritas patrum nell' antica Roma*; Greenidge, A. H. J., *Legal Procedure of Cicero's Time*, see index, s. Centuriata Comitia, Lex, Provocatio, etc.; *Roman Public Life*, 75, 252 f., 255; Abbott, F. F., *Roman Political Institutions*, 253–9; Wirz, H., *Perduellionsprocess des C. Rabirius*, in *Jahrb. f. Philol.* xxv (1879). 177–201; Mirabelli, G., *Di un processo politico avvenuto negli ultimi tempi della republica Romana*; Schulthess, O., *Der Process des C. Rabirius vom Jahre 63 v. Chr.*; Baron, in *Berl. Philol. Woch.* 1893. 658–60.

CHAPTER XII

THE COMITIA TRIBUTA AND THE RISE OF POPULAR SOVEREIGNTY

To the Year 449

In the belief of the Romans the tribunes of the plebs, originally two, were instituted in 494 as a concession to the seceding commons to win them back to the state.[1] The historical truth of the first secession need not be discussed here; but there is no good ground for rejecting the view of the ancients either that the tribunate of the plebs owed its existence to a revolution or that it began at as early a date. According to our sources the plebeian tribunes, hence we may infer also the aediles, were for a time elected, and other business affecting the interests of the common people was transacted, in comitia curiata composed potentially of all the citizens.[2] The change in the form of organization in 471, from curiate to tribal, will be considered below. The president of the comitia which

[1] Livy ii. 33. 1; Calpurnius Piso, in ibid. § 3; 58. 1; Dion. Hal. vi. 89. 1; cf. Cic. *Rep.* ii. 33. 58; Mommsen, *Röm. Staatsr.* ii. 274 f. with notes. Meyer, in *Rhein. Mus.* xxxvii (1882). 616 f., suggests a doubt as to whether they were instituted at that time. Niese, *De annalibus Romanis observationes* (1886), and Meyer, in *Hermes*, xxx (1895), 1–24, have tried to prove that they were not instituted till 471 and that their original number was four. Niese's view is controverted by Joh. Schmidt, in *Hermes*, xxi (1886). 464–6. Pais, *Anc. Italy*, 260, 275, assumes that they came into existence as a result of the abolition of the decemvirate.

[2] Cic. Frag. A. vii. 48: "Tanta igitur in illis virtus fuit, ut anno XVI post reges exactos propter nimiam dominationem potentium secederent . . . duos tribunos crearent, . . . Itaque auspicato postero anno tr. pl. comitiis curiatis sunt"; Dion. Hal. vi. 89. 1; cf. ix. 41. 4 f. (included clients and patricians); Livy ii. 56, especially § 3, 10. These authors represent the tribunes as trying vainly to force the patricians from the assembly while the voting was under way. The question of excluding the patricians, however, is connected with the statute of Publilius Philo (339) rather than with the so-called plebiscite of Publilius Volero (471); p. 300 f.

Dion. Hal. vii. 59. 2, places the first tribal meeting in 491, twenty years before the date to which its institution is otherwise assigned. If his account is not an anticipation of later usage, it is exceptional.

elected the first plebeian tribunes was necessarily a patrician magistrate,[1] probably the pontifex maximus;[2] thereafter, with the exception of the comitia for the election of the first plebeian officials after the overthrow of the decemvirs, tribunes of the plebs presided not only for elections but also for judicial business and for the enactment of plebiscites (plebi scita).

The object of the office of tribune was the protection of individual citizens, plebeian and patrician alike,[3] from oppression; and the means was the auxilium (official aid),[4] which could be rendered in no other way than by personal contact; hence the law prohibiting a tribune from being absent over night from the city[5] and requiring him to leave the door of his house open during the night.[6] In the further interest of the citizens the tribunes had the unrestricted right to call the plebs to a contio and address them at any time and on any subject, to form them when so assembled into voting groups, at first curiae and after 471, tribes, and to take their votes on proposals affecting plebeian interests, plebiscites being from the beginning binding on the plebeian body in so far as they harmonized with the laws of the state.[7]

These were the two original functions from which the vast powers of the later tribunes gradually developed. As strictly

[1] (1) Because there were no other magistrates at the time, (2) because the meeting was auspicated; p. 262, n. 2.

[2] Inferred from the circumstance that this dignitary presided over the assembly which elected the first college of tribunes after the fall of the decemvirs; Livy iii. 54. 5, 9, 11; p. 285 below.

[3] Livy iii. 13. 6; 56. 5; viii. 33. 7; ix. 26. 16; xxxviii. 52. 8; Suet. *Caes.* 23. Naturally the plebeians were in most need of protection; cf. Ihne, in *Rhein. Mus.* xxi (1866). 169.

[4] Livy ii. 33. 3: "Auxilii non poenae ius datum illi potestati"; cf. Ihne, ibid. 170.

[5] Gell. iii. 2. 11; xiii. 12. 9; Macrob. *Sat.* i. 3. 8; Dion. Hal. viii. 87. 6; Serv. *in Aen.* v. 738; cf. Mommsen, *Röm. Staatsr.* ii. 291, n. 2.

[6] Plut. *Q. R.* 81.

[7] In this respect the plebeian body was analogous to a corporation; Gaius, in *Dig.* xlvii. 22. 4 (quoting a law of the Twelve Tables). But it was not a private association. It could neither limit its membership nor change its organization. Proof of these two facts is that the change of organization from curiate to tribal and the consequent exclusion of the landless resulted from a centuriate law; p. 271. Notwithstanding the fact that its resolutions lacked the force of law, the close relation existing between it and the state gave it from the beginning a prominent place in the constitution.

plebeian officials they had no authority to summon patricians, to exclude them from the place of assembly,[1] or to condemn them judicially.[2] It follows that their alleged prosecutions of past consuls for maladministration[3] are fictions[4] — an anticipation of their jurisdiction at a later age. Directly they possessed no power of judgment or of coercion;[5] but for the enforcement of the auxilium and of the ius agendi cum plebe their persons were made sacred — sacro sancti — by an oath which the plebs swore at the time they instituted the office,[6] namely that any one who killed a tribune or aedile of the plebs or did him bodily harm, or who commanded another to inflict harm or death upon him might as a person devoted to Jupiter be killed with impunity, and his property be confiscated.[7] The avenger was necessarily either a private plebeian or an official of the plebs.[8] The formal act which rendered the tribunes sacred was termed a lex sacrata. The essence of such a law is (1) that it was sworn to by the community — in this instance by the community

[1] Livy ii. 56. 11–13 (The consul asserted that according to ancestral usage he himself had no right to remove any one from the place of assembly); cf. 35. 3: "Plebis non patrum tribunos esse."

[2] Livy ii. 35. 3: "Auxilii non poenae ius datum illi potestati"; 56. 11–13.

[3] Cf. Livy ii. 35. 2; 52. 3 ff.; 54. 3 ff.; 61.

[4] Cf. Mommsen, *Röm. Staatsr.* ii. 320, n. 2; Ihne, in *Rhein. Mus.* xxi (1866). 175 ff.; Herzog, *Röm. Staatsverf.* i. 157.

[5] Hence they had no viatores; so that for a time after they assumed criminal jurisdiction the aediles acted as their bailiffs; p. 290.

[6] Livy iii. 55. 10: (In the opinion of some iuris interpretates) "Tribunos vetere iure iurando plebis, cum primum eam potestatem creavit, sacrosanctos esse."

[7] Fest. 318; Livy iii. 55. 6–10; Dion. Hal. vi. 89. 3. The wording of the oath as given above is derived from the law which, according to Livy, was carried by the consuls Valerius and Horatius in 449; but there can be no doubt that this statute confirmed the oath taken long before by the plebs. As to the connection of Ceres with the plebeian organization, Pais, *Anc. Italy*, 272 ff., believes that her temple was not built before the middle of the fifth century, whereas Wissowa, *Relig. u. Kult. d. Röm.* 45, holds to the traditional date (493); cf. De Sanctis, *Storia d. Romani*, ii. 30. The building of the temple did not necessarily precede the institution of the tribunate. On the sacrosanctitas of the aediles, see Cato, in Fest. 318. 8; Mommsen, *Röm. Staatsr.* ii. 472 f.

[8] As late as 131 a tribune of the plebs, C. Atinius Labeo, regarding the censor Q. Caecilius Metellus as a homo sacer for alleged violation of the tribunician sanctity, attempted without legal trial to hurl him from the Tarpeian Rock; Livy, ep. lix; Pliny, *N. H.* vii. 44. 142 f., 146; Cic. *Dom.* 47. 123. See also Vell. ii. 24. 2; (Aurel. Vict.) *Vir. Ill.* 66. 8.

of plebs, (2) that the offender against it became a homo sacer and could be put to death with impunity.[1] This idea of sanctity the plebeians may have derived partly from the Greek asylum;[2] but it seems also to have been influenced by the condition of ambassadors, hence the later, ill-founded conception of the plebs as a state, and of the plebeian officials and other institutions as based on a treaty ratified with fetial ceremonies between the patrician government and the seceding plebs.[3] Though termed lex sacrata because it was passed and sworn to in the community, as it were, of the plebs, like any plebiscite of this period the resolution had no legal validity for the state or for the patricians. Under compulsion, however, the government yielded to the demands of the plebeians without formally acknowledging the sanctity of their officials; so that the patricians, by asserting that Roman law did not recognize an inviolability founded purely on religion,[4] could afterward deny that the tribunes were really sacrosanct. Till the enactment of the Valerian-Horatian laws of 449,[5] accordingly, the inviolability of

[1] Cic. *Balb.* 14. 33; Fest. 318. 9; Herzog, *Röm. Staatsverf.* i. 147; also in *Jahrb. f. cl. Philol.* xxii (1876). 139–50; cf. Mommsen, *Röm. Staatsr.* ii. 286. Ihne, in *Rhein. Mus.* xxi (1866). 176, expresses the belief that the lex sacrata had nothing more than a religious influence, that the offender suffered in his conscience and in public opinion only. The known leges sacratae, collected by Herzog, were (1) the first Valerian law of appeal; Livy ii. 8. 2 (cf. ii. 1. 9); (2) the act which rendered the persons of the tribunes sacred, and which, as intimated above, was not strictly a statute; Livy ii. 33. 1, 3; Fest. 318. 30; Dion. Hal. vi. 89. 2; Cic. Frag. A. vii. 48; (3) the lex de Aventino; Livy iii. 31. 1; 32. 7; Dion. Hal. x. 32. 4; (4) the Valerian-Horatian law of appeal; Livy iii. 55. 4; (5) the military lex sacrata of 342; Livy vii. 41. 3; (6) the law of M. Antonius for the abolition of the dictatorship, 44; Appian, *B. C.* iii. 25. 94; Dio Cass. xliv. 51. 2.

[2] Pais, *Anc. Italy*, 263.

[3] Dion. Hal. vi. 84, 89. 1; cf. vii. 40; xi. 55. 3; Fest. 318; Livy iv. 6. 7. The idea that there was such a treaty is represented among moderns by Schwegler, *Röm. Gesch.* ii. 249 f.; Lange, *Röm. Alt.* i. 591; ii. 566, and opposed by Herzog, *Röm. Staatsverf.* i. 146 f.; De Sanctis, *Storia d. Romani*, ii. 29.

[4] Plut. *Ti. Gracch.* 15; Mommsen, *Röm. Staatsr.* ii. 287, n. 1. The fictitious character of the legal basis on which the plebeians are represented as acting in this early period of their history may be illustrated, as Mommsen, *Röm. Staatsr.* ii. 299, n. 3, has pointed out, by their assumption of the agrarian proposal of Sp. Cassius as one of their fundamental principles, the application of which neither magistrates nor private individuals were at liberty to impede; cf. Livy ii. 54, 61; Dion. Hal. ix. 37, 54; Schwegler, *Röm. Gesch.* ii. 480, 531, 567. The fault is not all with the annalists.

[5] P. 274.

the tribunes existed in so far only as the plebeians were in a position to maintain it by holding over their opponents and over the government the threat of violence and revolution. That under the circumstances domestic peace was on the whole preserved should be credited to the orderly character of the great mass of citizens.

Applied to the holding of contiones and comitia, this inviolability protected the presiding tribune from interruption, contradiction, and every disturbance. The principle was afterward extended to verbal abuse anywhere publicly indulged in.[1] Even if a man showed disrespect by not stepping out of the way of a tribune who was passing along the street, he was liable to the death penalty.[2] Under normal conditions, however, the rigorous execution of this lex sacrata could not be thought of; in place of outlawing the offender against his person the tribune was ordinarily willing to impose a fine upon him, from which an appeal might be made to the plebeian assembly; or in cases of violence to his person, he might resort to capital prosecution, which was likewise appealable. These principles were formulated in an alleged Icilian plebiscite of the year 492.[3] From what has just been said it is clear that the tribune's coercive[4] and judicial functions resulted, not from usurpation as has often been asserted,[5] but from a mitigation of the harsh lex sacrata. In a word, the ultimate basis of tribunician authority was the revolutionary power of the plebs, upon which rested the sanctity

[1] Livy, ep. lviii; Plut. *Ti. Gracch.* 10. [2] Plut. *C. Gracch.* 3.

[3] Dion. Hal. vii. 17. 5: Δημάρχου γνώμην ἀγορεύοντος ἐν δήμῳ μηδεὶς λεγέτω μηδὲν ἐναντίον μηδὲ μεσολαβείτω τὸν λόγον. Ἐὰν δέ τις παρὰ ταῦτα ποιήσῃ, διδότω τοῖς δημάρχοις ἐγγυητὰς αἰτηθεὶς εἰς ἔκτισιν ἧς ἂν ἐπιθῶσιν αὐτῷ ζημίας. Ὁ δὲ μὴ διδοὺς ἐγγυητὴν θανάτῳ ζημιούσθω, καὶ τὰ χρήματ' αὐτοῦ ἱερὰ ἔστω. Τῶν δ' ἀμφισβητούντων πρὸς ταύτας τὰς ζημίας αἱ κρίσεις ἔστωσαν ἐπὶ τοῦ δήμου; cf. x. 32. 1; 42. 4. Although we may feel uncertain as to the author and the date of this plebiscite, we need not doubt its existence, especially as the principle it contains is derived from leges sacratae by Cicero (*Sest.* 37. 79; cf. Pliny, *Ep.* i. 23), and was often put into practice; Livy iii. 11. 8; xxv. 3 f.; Dion. Hal. x. 41 f.; Cic. *Inv.* ii. 17. 52; Val. Max. ix. 5. 2; (Aurel. Vict.) *Vir. Ill.* 65; cf. Mommsen, *Röm. Staatsr.* i. 260 n. 2; ii. 289, n. 1; Lange, *Röm. Alt.* i. 602 f.; ii. 567. For the state, however, it had no more validity than had the original lex sacrata, of which the so-called Icilian plebiscite was an expansion.

[4] Gell. xiii. 12. 9: "Tribuni, qui haberent summam coercendi potestatem."

[5] Cf. Mommsen, *Röm. Forsch.* i. 179; Ihne, in *Rhein. Mus.* xxi (1866). 174.

of the tribunes, and thereon their jurisdiction. Of the judicial activity attributed by the annalists to the plebeian officials in the period before the decemvirs we do not know how much is mythical; but it is safe to say that all the capital cases, probably all the cases without qualification, which they actually settled as judges were submitted to by the patrician government for the sake of peace, without being accepted as legal.

To the third year of the tribunate, 491, is assigned the first mentioned exercise of tribunician jurisdiction. C. Marcius Coriolanus, the accused, had advocated in the senate the abolition of the tribunician office,[1] and had done personal violence to the aediles, in this way rendering himself liable to the penalty of the lex sacrata on which rested the sanctity of the plebeian officials. Instead of declaring him a homo sacer, a tribune brought him to trial before the tribes, which condemned him by a narrow majority.[2] The story is now regarded by all scholars as a myth. The vote by tribes at this early time is either exceptional or more likely an anticipation of later usage.[3]

In accordance with the Icilian plebiscite a capital charge is said to have been brought by a tribune of the plebs against Kaeso Quinctius on the ground that he had repeatedly driven the tribunes from the Forum and had dispersed their assembly.[4] After providing sureties the accused went into exile,[5] and the sentence of banishment was passed — in Cicero's opinion by the comitia centuriata, in Livy's by the tribal comitia of plebs, 461.[6] Another case prior to the decemvirate is recorded for the year 455. Representatives of three illustrious patrician families were charged with having disturbed an assembly under tribunician presidency. Their estates were forfeited to Ceres.[7] Naturally

[1] Mommsen, *Röm. Staatsr.* ii. 299, n. 1, expresses the opinion that the original form of the story represented Coriolanus as consul proposing a law for the abolition of the tribunate.

[2] Dion. Hal. vii. 20–67, especially 59. 9 f.; 65; Livy ii. 34 ff.; Plut. *Cor.* 16–20; Lange, *Röm. Alt.* i. 605; ii. 565.

[3] P. 56, n. 4, 270 f.

[4] Livy iii. 11. 8 f.; Dion. Hal. x. 5 ff.

[5] Livy iii. 13. 8; Dion. Hal. x. 8. 3.

[6] Livy's idea that this assembly met in the Forum (iii. 13. 8) is sufficient evidence of his point of view. Cicero's opinion (*Dom.* 32. 86; cf. *Sest.* 30. 65) may be biassed by his personal feelings; p. 268, n. 6.

[7] Dion. Hal. x. 41 f. Various attempts of tribunes in this period to punish retired magistrates for abuse of office are also alleged by the ancient writers; cf. p. 264.

under this arrangement between the plebs and the government there was room for much misunderstanding: the leaders of the plebs stretched their claims to the uttermost; and the patricians, after granting the radical concession, endeavored to recall as much of it as possible. They plausibly urged that while the sacrosanctitas, so far as it existed,[1] might protect the person of the tribune, it gave him no authority over a patrician;[2] and their position as the sole holders of political power and the sole repositories of law and usage enabled them before the decemviral legislation by stubborn, skilful perseverance in the details of political warfare almost to throw the tribunician sanctity into oblivion.[3] Livy tells us that in the assembly appointed for the trial of the past consuls L. Furius and C. Manlius, the accusing tribune failed to appear, and was found murdered in his home; and the historian gives us to understand that the crime was the result of a private conference among the patricians.[4] Dio Cassius[5] states that they secretly slew a number of the boldest spirits among the plebeians. Though these stories are mythical, they reflect at least the opinion of the historians that in this early period the sanctity of the tribune counted for little. If it failed to protect his person, it could have given him no great degree of recognized judicial competence. Under these circumstances we should not expect to find the tribunes often bringing the power of their questioned sanctity into actual use in the early years of their existence; but that before the decemvirate they exercised jurisdiction to some extent even in capital cases, which were appealed to the assembly under their presidency, is proved by a law of the Twelve Tables, which, to remedy what the legislators must have considered an abuse, provided that accusations affecting the caput of a citizen should be brought only before the comitiatus maximus — evidently the comitia centuriata.[6]

[1] P. 265 f. [2] Livy ii. 35.3; cf. 56. 11 f. [3] Livy iii. 55. 6.
[4] Livy ii. 54. [5] Frag. 22. 1.

[6] P. 241; cf. also Herzog, *Röm. Staatsverf.* i. 157. A far different view as to the form of assembly which received appeals in tribunician capital cases is represented by Cicero, in whose opinion the comitia centuriata were established as the sole power to judge concerning the caput of a citizen even in pre-decemviral time by the leges sacratae (*Sest.* 30. 65); and accordingly he believes that the sentence of exile was passed on Kaeso Quinctius by that body (*Dom.* 32. 86). But in this opinion Cicero's personal bias already referred to (p. 267, n. 6) cannot be neglected: in discrediting

If the tribunes presumed to condemn men to death, they certainly would not hesitate to fine them for lighter offences. For checking the power of the magistrates to levy unlimited fines the consuls of 454, A. Aternius and Sp. Tarpeius, passed through the comitia centuriata a law which set the maximum fine to be levied by a magistrate on an individual in any one day at thirty cattle and two sheep, the minimum being a single sheep. In case he exceeded the former amount, an appeal could be made to the assembly.[1] In the opinion of Dionysius[2] this law was interpreted to apply to all magistrates, including those of the plebs, and was made accordingly the basis of the tribunician jurisdiction in finable offences. These consequences seem to have been drawn from the statute, although the proposers may not have so intended it.[3]

Sufficient evidence has now been offered that before the decemviral legislation the plebeian tribunes exercised, on the basis of their sanctity, a vague jurisdiction in both finable and capital cases, occasionally submitted to by the patrician government though probably not recognized by it as just or constitutional. For the same period their method of agitation by the obstruction of the levy,[4] by haranguing the people in contiones,[5] and occasionally by sedition, proves clearly the lack of legislative power through the assembly over which they presided, as well as their lack of veto on the acts of the government. With reference to legislation the course of the discussion in the present and following chapters will make it evident that only by a provision of the Hortensian statute did plebiscites become unconditionally binding on the whole people. Although from the beginning a tribune, as a member of a collegial office,

the decree of exile passed against himself by the tribal comitia, it was agreeable to his purpose to deny that this assembly ever had enjoyed such competence. The view given in the text, represented by the annalists and confirmed by a law of the Twelve Tables, is obviously preferable.

[1] Cic. *Rep.* ii. 35. 60; Gell. xi. 1. 2 f.; Fest. 202. 11; 237. 13; ep. 144; cf. p. 233 above. Dionysius, x. 50. 1 f., wrongly gives two cattle and thirty sheep as the maximum. [2] X. 50. 1 f.

[3] With less probability Lange, *Röm. Alt.* i. 620; ii. 576 f., regards it as a concession to the plebs to satisfy their craving for the limitation of the consular power by written law.

[4] Livy ii. 43. 3; 44. 6; Dion. Hal. viii. 87. 4; ix. 5. 1; 18. 1; x. 26. 4; Dio Cass. Frag. 22. 3; Zon. vii. 17. 7. [5] Livy iii. 11. 1.

could intercede against the act of a colleague, he had in this period no legal right of the kind against the government; for had he now possessed it, as he did at a later age, he would have felt no need of obstructing the levy — a relatively slow, clumsy method of political warfare. It is to be noticed further that the power of veto of the tribunes, after it had been acquired, rested upon their jurisdiction. If a magistrate persisted in ignoring their prohibition, his act remained valid but he rendered himself liable to tribunician prosecution.[1] Necessarily, then, as long as the tribunes lacked judicial competence (till the Valerian-Horatian legislation, 449) they lacked the veto against governmental action; as long as their judicial competence depended upon the will of the government (probably till the Hortensian legislation, 287), their veto on the government must have been correspondingly limited. Finally it was not till tribunician obstruction of the levy, sedition, and secession disappear (that is, with the enactment of the Hortensian statute) that we have a right to assume the existence of an unrestricted tribunician veto.[2] The method of the tribunes in the pre-decemviral period was, by the means above indicated, to force a proposed measure upon the patrician magistrates, and to compel them to bring it before the centuriate assembly in regular form.[3]

In view of the circumstances that passed bills alone were recorded and hence could be known to posterity, we may reject as unauthentic all the alleged proposals of agrarian laws of this period,[4] which however may not have been free from agitation of the kind.

A law of the year 471 gave the tribunician assembly a tribal organization. This measure, brought about by the agitation of

[1] Mommsen, *Röm. Staatsr.* ii. 297.

[2] The veto of governmental acts, assigned them for the pre-decemviral period by the historians (cf. Livy ii. 44), is therefore an anachronism. The very fact mentioned by Livy, in the chapter here cited, of the patrician attempt to win as many tribunes as possible points to obstruction rather than to the veto as their weapon. The increase in the number of tribunes from two to ten indicates the same condition.

[3] Cf. Herzog, *Röm. Staatsverf.* i. 157.

[4] Cf. Livy ii. 42. 6; 43. 3; 44. 1; 48. 2 f.; 52. 2 f.; 54. 2; Dion. Hal. viii. 87. 4 f.; ix. 5. 1; 37. 1 f.

Publilius Volero, tribune of the plebs of that year,[1] must, for the reason above mentioned, have been an act of the comitia centuriata.[2] The motive given by Livy was the desire of the tribunes to free themselves from the influence which the patricians through the votes of their clients exercised on the assembly.[3] The curiae contained all the citizens,[4] the tribes none but the landowners. The tribal organization, therefore, excluded not all the clients but those only, together with any other citizens, who were landless.[5] Probably in other ways the patricians had greater control of the curiate than of the tribal assemblies, although it is impossible to believe with Dionysius[6] that the essence of the change from the curiate to the tribal comitia consisted in the elimination of auspical influence. That the law forbade the patricians to take part in tribunician assemblies, as Zonaras[7] imagines, is not probable, for it gave the tribune no new authority over the patricians; he had power neither to summon them to his assembly nor to expel them from it.[8] In fact we have evidence of the presence of patricians in tribunician assemblies after this date.[9] The so-called law of Publilius Volero, now under discussion, was confused by the sources with the Publilian law of 339, some of the provisions of the later act being uncritically assigned to the earlier.[10]

The statute of 471 imparted to the tribunician assembly no new function. Although in mentioning the bill Dionysius[11] includes a proposal to grant the assembly legislative power,

[1] Livy ii. 56. 2: "Rogationem tulit ad populum, ut plebei magistratus tributis comitiis fierent."

[2] The senate gave its consent; Livy ii. 57; Dion. Hal. ix. 49. 3 f.

[3] Livy ii. 56. 3: "Haud parva res sub titulo prima specie minime atroci ferebatur, sed quae patriciis omnem potestatem per clientium suffragia creandi quos vellent tribunos auferret"; cf. Dion. Hal. ix. 41. 5.

[4] That the ancients had this conception of the curiate assembly which elected tribunes cannot be doubted; p. 24, 32; cf. Mommsen, *Röm. Forsch.* ii. 283, n. 1.

[5] P. 54, 60 f.

[6] IX. 49. 5; cf. 41. 3. Patrician magistrates auspicated their comitia, plebeian magistrates did not; p. 104.

[7] VII. 17. 6: Καί τινες τῶν δημάρχων ἄλλα τε κατὰ τῶν εὐπατριδῶν συνέγραψαν, καὶ τὸ ἐξεῖναι τῷ πλήθει καὶ καθ' ἑαυτὸ συνιέναι καὶ ἄνευ ἐκείνων βουλεύεσθαι καὶ χρηματίσαι πάνθ' ὅσα ἂν ἐθελήσῃ; cf. Livy ii. 60. 4 f.

[8] Livy ii. 56. 11 f.

[9] Livy iii. 11. 4; vi. 35. 7; Dion. Hal. x. 3. 5; ch. 4; 40. 3 f.; 41.

[10] P. 300 f.

[11] IX. 43. 4.

when he comes to speak of the statute as actually passed, he refers only to its provisions for the election of plebeian tribunes and aediles by the tribes, herein agreeing with Livy and other authorities.[1]

In the same year four tribunes of the plebs were elected for the first time.[2] The increase was probably effected by an article of the statute under discussion.

Till after the decemviral legislation the comitia tributa,[3] brought into existence by the statute of 471, was restricted, as had been the tribunician comitia curiata, to the transaction of purely plebeian business. In the records of this period we find a continuance of apocryphal agrarian bills[4] and condemnations of retired magistrates.[5] In reality the only political weapon of the tribunes, aside from general agitation, continued to be the obstruction of the levy,[6] as is proved by their increase in number to ten.[7] The only agrarian law of the period, the so-called lex Icilia for the division of the Aventine among the people, was passed by the comitia centuriata.[8] The very circumstance that this mild concession to the plebs was couched

[1] Dion. Hal. ix. 49. 5; Livy ii. 56. 2; Dio Cass. xxxix. 32. 3; Suet. *Caes.* 76; cf. Herzog, *Röm. Staatsverf.* i. 799, n. 2.

[2] Diod. xi. 68. 8: Ἐν τῇ Ῥώμῃ τότε πρώτως κατεστάθησαν δήμαρχοι τέτταρες, Γάιος Σικίνιος καὶ Λεύκιος Νεμετώριος, πρὸς δὲ τούτοις Μάρκος Δουίλλιος καὶ Σπόριος Ἀκίλλιος. Livy, ii. 58. 1, following Piso, supposes that the number was now increased from two to five. Dio Cassius probably placed the increase from five to ten at this date; Zon. vii. 15. 1; 17. 6; Dio Cass. Frag. 22. 1. In the opinion of Meyer, in *Hermes*, xxx (1895). 1–24; *Gesch. d. Alt.* v. 141 f., the plebeian tribunate was instituted at this time and the original number was four; cf. p. 55, n. 1 above. But Diodorus does not say so; indeed his grouping of the four tribunes in pairs suggests a doubling — a fact which he has perhaps condensed from his source.

[3] It has been shown above (119 ff., 126 ff.) that the assembly of tribes under tribunician presidency is rightly so designated.

[4] Livy ii. 61. 1; 63. 2; iii. 1. 2 f.; Dion. Hal. ix. 51 f.

[5] Livy iii. 31. 5 f. (454); Dion. Hal. x. 34 f., 42, 48; Pliny, *N. H.* vii. 28. 101.

[6] Livy iii. 10; 25. 9; 30. 5; Dion. Hal. x. 15. 3; 20. 4; 26. 4; Dio Cass. Frag. 21.

[7] Livy iii. 30. 5; Dion. Hal. x. 30. 6 (457). The object, as stated by Livy, was increased protection for the commons. Any enlargement of the number after they had acquired the veto would have been a positive disadvantage; Herzog, *Röm. Staatsverf.* i. 161; cf. above p. 270, n. 2. The change was made with the consent of the senate, doubtless through a centuriate law.

[8] P. 233, 265, n. 1 (3).

in a lex sacrata[1] shows how little faith the commons had in the government.[2]

During this period the supreme power was the senate. Shortly after the fall of the kings it provided for the purchase of corn among neighboring states in a time of scarcity, made a state monopoly of salt in the interest of the poor, freed the plebs from port dues and tributum, thereby placing the whole burden of these taxes on the wealthy.[3] These acts imply legislative as well as administrative competence. Foreign affairs,[4] including the decision of war and peace, were in its hands. It resolved not to restore the property of the Tarquins,[5] decreed triumphs to victorious generals,[6] the celebration of games,[7] the expulsion of the Volscians from the city in the time of a festival,[8] controlled the magistrates, including the plebeian tribunate, by means of the dictatorship,[9] or clothed the consuls with absolute authority.[10] Little room was left for the activity of the assemblies.

Notwithstanding these unfavorable conditions the tribunes of the plebs through obstruction of the levy and through their harangues in contiones[11] were chiefly instrumental in bringing about the institution of the decemviri legibus scribundis. Actual votes in tribunician comitia on proposals looking to that end[12] could have had no more than moral weight. Under popular pressure the consul Sestius, 452, referred the question to the senate,[13] and the bill for their institution was passed by comitia, doubtless of the centuries. The only valid activity, therefore, of the tribal assembly prior to the decemviral legislation, so far as is known, was the enactment of plebiscites, which lacked the force of law, the election of plebeian officials,[14] and the quasi-judicial decision

[1] P. 265, n. 1 (3). [2] Herzog, *Röm. Staatsverf.* i. 170.

[3] Livy. ii. 9. 6. Even if these acts are not historical, there can be no doubt that the senate had the power which they imply.

[4] Cf. Livy ii. 15. 1 f. [5] Livy ii. 3. 5; 5. 1.

[6] Cf. Livy iii. 70. 14. [7] Livy ii. 36. 1; 37. 1.

[8] Livy ii. 37. 8. [9] Cf. Livy iii. 21. 1 f.

[10] Livy iii. 4. 9 (464). As long as the dictatorship was in use (till near the end of the third century B.C.) there was no need of resorting to this measure, although it cannot be doubted that the senate had the right. [11] Cf. Livy iii. 11. 1.

[12] Livy iii. 11. 4; 14. 5; 16. 6; 17. 4; Dion. Hal. x. 3. 3 f.; 4. 2.

[13] Livy iii. 33. 4; Dion. Hal. x. 55. 3; p. 233 above.

[14] Cf. Livy ii. 58. 1; iii. 24. 9; 30. 6.

of cases appealed to it by those who were accused of violating the tribunician sanctity.[1]

An epoch was made in the history of the tribunate and of the tribal assembly by the consulship of Valerius and Horatius, 449, who proposed and carried a centuriate law[2] which gave these institutions a legal basis. The article which logically first claims our attention provided that any one who injured the tribunes of the plebs, the aediles, or the decemviral judges should be devoted to Jupiter, and his property should be forfeit to the temple of Ceres, Liber, and Libera.[3] According to Livy,[4] who here represents the tribunician point of view, the original lex sacrata, passed on the Sacred Mount, was first renewed with appropriate ceremonies, thus reëstablishing the religious inviolability of the plebeian officials, whom then the article of the Valerian-Horatian statute here mentioned rendered legally inviolable. The constitutional relation of these two ideas was difficult even for the Romans to determine. Certain jurists, controverting the tribunician interpretation, asserted that this law made no person sacrosanct, but merely threatened with capital punishment any one who injured the officials concerned, clothing them thus in the same kind of inviolability as that which protected the ordinary magistrates.[5] The object, according to this view, was not only to eliminate from the government the anomaly of a power sanctioned by religion only,[6] but also to convert the plebeian officials into state officials. The leaders of the plebs gladly accepted the new position tendered them, without being willing however to withdraw from the old. Henceforth we have to deal, accordingly, with a group of legally recognized public functionaries who effectively claimed a religious inviolability hard to reconcile with the constitution, in which they were in time to make for themselves a disproportionate place.

The second article of the Valerian-Horatian statute was to the effect that "whatever the plebs ordered in their tribal assembly

[1] Cf. p. 264 ff.

[2] P. 234.

[3] Livy. iii. 55. 7; cf. p. 264.

[4] Ibid. § 6 f.

[5] Livy iii. 55. 8 ff.; cf. Cic. *Balb.* 14. 33; *Tull.* 20. 47; Appian, *B.C.* ii. 108. 453; Mommsen, *Röm. Staatsr.* ii. 303 with notes.

[6] Plut. *Ti. Gracch.* 15.

should be valid for the people"; [1] so that henceforth plebiscites, when passed under the conditions hereafter specified, were the equivalent of leges, as they were often so called. It is so similar to a provision of the later Publilian and of the still later Hortensian statute that we should incline to reject it as an anticipation of the one or the other, were it not for the fact that under it important plebi scita, as the Canuleian, the Licinian-Sextian, and the Genucian, were passed.[2] We must accept it, then, as historical, and adapt our interpretation to the few known facts in the case.

Notwithstanding the use of the word plebs to designate the tribal gathering under tribunician presidency, there is no valid reason for supposing that the Valerian-Horatian law altered its composition — that the patricians were now excluded.[3] Dionysius [4] is clearly of the opinion that they participated in this form of comitia both before and after the enactment of the statute under consideration; and Livy [5] thinks of them as still present in the tribunician meetings as late as the struggle for the Licinian-Sextian laws. The problem must be considered in connection with the development of the voting function of the assembly. Primitively the leaders (nobles) in council decided upon a measure, which they then submitted to the people to be accepted

[1] Livy iii. 55. 3: "Cum velut in controverso iure esset, tenerenturne patres plebi scitis, legem centuriatis comitiis tulere, ut quod tributim plebis iussisset, populum teneret, qua lege tribuniciis rogationibus telum acerrimum datum est"; cf. 67. 9; Dion. Hal. xi. 45. 1.

[2] On the tribunician legislation of the period 449–339, see p. 292 ff.

[3] P. 271.

[4] XI. 45. 3: *Εἴρηται δὲ καὶ πρότερον, ὅτι ἐν μὲν ταῖς φυλετικαῖς ἐκκλησίαις οἱ δημοτικοὶ καὶ πένητες ἐκράτουν τῶν πατρικίων.*

[5] VI. 35. 7: "Qui (patres) ubi tribus ad suffragium ineundum citari a Licinio Sextioque viderunt, stipati patrum praesidiis nec recitari rogationes nec sollemne quidquam aliud ad sciscendum plebi fieri passi sunt." When the tribes were again called for voting, the dictator, accompanied by a crowd of patricians, took a seat in the assembly and supported the tribunician protest; Livy vi. 38. 5 ff. On another occasion some years earlier the patres old and young came into the Forum, and taking their places in the several tribes, appealed to their tribesmen to vote against the proposal of the tribunes; Livy v. 30. 4 f. Still earlier C. Claudius and other senior patricians spoke in a tribuncian assembly against the measure then before the plebs. Soltau's objection (*Berl. Stud.* ii. 47) to the interpretation here represented has little weight, as it rests upon the theory that from the beginning everything was carefully defined and regulated by law.

with clamor and din.[1] Although the acclamation was essentially an act of the masses, nothing forbade the nobles to join in the shouting. Doubtless in the tribal assemblies the expression of opinion within the tribe continued for a time to be by acclamation.[2] As long as this primitive condition existed, a distinction could not be drawn between the right to be present and the right to join in the decision of questions brought before the comitia. Undoubtedly the custom of voting by heads within the tribe was an imitation of a usage adopted by the comitia centuriata some time after the institution of the latter;[3] hence we could not reasonably assume its use by the tribes so early as the pre-decemviral period. The question therefore as to whether the patricians, who were certainly present in meetings of the tribes, enjoyed the right of voting in them could not have arisen till after the decemviral legislation. The plebeians had found it impossible by their own powers to exclude from their assembly the landless clients, who were inferior to themselves.[4] Much less could they exclude the nobles. If the presiding tribune could not prevent their remaining after the people had been formed into voting groups, he could not prevent their voting. As the patricians, equally with the plebeians, belonged to the tribes, the former, being men of superior privilege, could not lawfully be debarred from meetings of their associations; and if they chose to attend, it was not for the tribunes of the plebs to decide as to the law in the matter. The word plebs in the statute is susceptible of an easy explanation. As the comitia curiata and comitia centuriata, under patrician presidents, had from the beginning been termed populus, nothing could be more natural than that from the time an assembly convened under plebeian presidency for plebeian objects, the latter should by way of distinction be termed plebs, even though the few patricians were included. Ordinarily the plebeians must have welcomed patricians to their assemblies, as the presence of magistrates and senators and their sons added dignity and weight to the proceedings. But when the patricians used all their superior influence in both lawful and unlawful ways to block a popular measure, the tribunes, naturally wishing then

[1] P. 153, 156 f. [2] P. 157, 211. [3] P. 211. [4] P. 271, n. 3.

to exclude them, attempted to establish the principle that tribunician assemblies were exclusively plebeian. This question was settled by the law of Publilius Philo, 339.[1]

This article of the Valerian-Horatian statute was a concession extorted from the patrician government by the strongest pressure, perhaps by a plebeian secession. The actual advantage which it brought to the plebs was minimized, however, by the provision that the previous consent of the senate was essential to the validity of bills brought before the tribunician assembly.[2] The patricians could urge in support of this arrangement that as their magistrates according to long established custom always obtained the previous consent of the senate (senatus consultum) to measures brought before any assembly, and were absolutely required to obtain senatorial sanction (patrum auctoritas) for curiate and centuriate laws and elections,[3] the tribunes, who were free from the trammels of the sanction, should be legally compelled to consult the senate before bringing a measure into their assemblies, especially as their legislation was in a field hitherto monopolized by the patrician magistrates and the senate. Although the tribunes of the plebs would have preferred to understand by the term plebiscite all that it had meant before — the unconditioned resolution of the tribal assembly under their presidency — they must have felt satisfied for the time being with the great gain they had made, however strenuous they afterward became to relieve themselves of senatorial control. This condition on the validity of the plebiscite is not expressly mentioned by Livy in connection with the Valerian-Horatian legislation, but is assumed by the sources for the following period.[4] The same

[1] P. 300 f.

[2] Mommsen, *Röm. Staatsr.* iii. 157, regarding the alleged pre-decemviral plebiscites as genuine acts of the plebs, believes that this conditioned validity of such acts was established at some unknown time prior to the decemvirate. The view of Herzog that certain statutes termed plebiscites in the sources were in reality centuriate laws is accepted in this chapter.

[3] P. 235.

[4] Livy iii. 55. 15; iv. 6. 3 (Canuleian plebiscite); 12. 8 (for the election of a prefect of the market, 440); 49. 6 ("Temptatum ab L. Sextio tribuno plebis, ut rogationem ferret, qua Bolas quoque sicut Labicos coloni mitterentur, per intercessionem collegarum, qui nullum plebi scitum nisi ex auctoritate senatus passuros se perferri ostenderunt, discussum est," 415); 51. 2 f. (413); vi. 42. 9 (Licinian-

thing is clearly implied, too, in the long series of political struggles which came after the enactment of the Valerian-Horatian statute.[1] Had the tribunes been free to legislate without interference on the part of the senate, they would have been in a position easily to complete the social and political equalization of the orders, and by one sweeping reform law to place themselves and their constituents in the condition reached by an almost uninterrupted conflict of a hundred and sixty years (449–287).[2]

It was in accordance with this regulation that another article of the Valerian-Horatian statute directed the aediles of the plebs to preserve the senatus consulta in the temple of Ceres.[3] We cannot look upon these officials as keepers of the senatorial

Sextian plebiscite); vii. 15. 12 f. (law against bribery, 356); 27. 3 (347); viii. 23. 11 f. (the plebiscite for prolonging the consular imperium, 327); x. 6. 9 (Ogulnian plebiscite, 300); 21. 9 (plebiscite ordering the praetor to appoint triumviri for conducting colonies, 296). Cf. also Dion. Hal. x. 26. 4 f. (457); 30. 1; 48. 1 (454); 50. 3; xi. 54. 4 (444); Mommsen, *Röm. Forsch.* i. 208 ff. All the citations from Dionysius, excepting the last, refer to pre-decemviral time, and hence are anticipations of a later condition.

The first triumph by order of the people, without the consent of the senate, according to Livy iii. 63. 11 (cf. Dion. Hal. xi. 50. 1), took place in 449. It is to be noticed, however, that a magistrate always had a right to triumph without permission either of the senate or of the people (Mommsen, *Röm. Forsch.* i. 214 f.), provided he paid his own expenses; Polyb. vi. 15. 8; Livy xxxiii. 23. 8. The resolution of the people on this occasion, if historical, may have been a mere pledge of sympathy and confidence; cf. p. 293. But Herzog, *Röm. Staatsverf.* i. 194, doubts its reality.

The "ancient law long ago abolished," which required the consent of the senate to proposals brought before the people, and which Sulla is said to have renewed (Appian, *B. C.* i. 59. 266; cf. p. 406), is ordinarily referred, as by Mommsen, *Röm. Staatsr.* iii. 158; Herzog, *Röm. Staatsverf.* i. 193, to the condition on the validity of the plebiscite under discussion. Appian may have had this restriction in mind, for we know at least that under the constitution as reformed by Sulla the tribunes did propose laws de senatus sententia; *CIL.* i. 204 (year 71); Bruns, *Font. Iur.* 94; Girard, *Textes*, 66; Lange, *Röm. Alt.* iii. 154; Mommsen, *Röm. Staatsr.* iii. 158; Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1559.

[1] Cf. Mommsen, *Röm. Staatsr.* iii. 157.

[2] Lange's idea (*Röm. Alt.* ii. 619; cf. i. 611, 614, 642) that there was no statute which made the consent of the senate essential to the validity of the plebiscite does not appear to be well considered. Had the tribunes not been bound by written enactment, they would have felt themselves free to legislate without the senate's coöperation, and even the law they tried in vain to disregard.

[3] Livy iii. 55. 13.

archives of that time,[1] and hence must conclude that the documents in their charge were those decrees which authorized the presentation of tribunician bills, for with those alone the plebeians were directly concerned.

The patricians expected to find a further safeguard in the tribunician veto, which could be directed against a colleague.[2] From the fact, however, that the tribunes continued to resort to the clumsy method of obstructing the levy, and afterward also of impeding the collection of the tributum,[3] we must infer that as yet their intercession did not prevail against a patrician magistrate.[4] Various popular seditions, too, are mentioned for the same period (449–287).[5] That one which led to the Hortensian legislation is historical, and it is hardly possible that all the others are fictions.

Another conservative check was the application of oblative auspices to the plebeian assembly.[6] Livy[7] reports that in 293

[1] Cf. Mommsen, *Röm. Staatsr.* iii. 158.

[2] Diod. xii. 25. 3: Ἐὰν δὲ οἱ δήμαρχοι μὴ συμφωνῶσι πρὸς ἀλλήλους, κύριοι εἶναι τὸν ἀνὰ μέσον κείμενον μὴ κωλύεσθαι; Livy iv. 48. 10–16 (416); 53. 6; v. 25. 1 (395); vi. 36. 8; 37. 3; 38. 5. The same passages show the dependence of the government upon the tribunes for checking innovations.

[3] Livy iii. 69. 5 f.; iv. 1. 6; 30. 15; 53. 2, 6 (407); 55. 1–5 (406); 60. 5 (403); v. 12. 3, 7 (397); vi. 27. 9 f. (376); 31. 4 (cf. 31. 1 f., year 374); vi. 36. 3 f.; Dion. Hal. xi. 54. 3 (444).

[4] It is true that Livy (iv. 50. 6, 8; 56. 10–13, year 408; v. 9. 4 ff., year 402; vi. 35. 9) assigns the tribune this right; but on one occasion (vii. 17. 12, year 356) he informs us that such a protest was disregarded by the magistrate. We may suppose that in this period they often attempted the power, but usually without success. They possessed a growing influence in the right to address the people, which must often have added an overwhelming force to their protests; cf. Livy iv. 25. 1 (434); 58. 14 (406); v. 2. 2 ff. (403); ch. 6 (403). This kind of obstruction may be meant by Livy iv. 36. 3 (424); 43. 3 (421); v. 17. 5 (397); vii. 21. 1 ff. (353). The government, on the other hand, continued to use the levy for the obstruction of tribunician bills; Livy iv. 55. 1 (409); v. 11. 9 (401).

[5] The principal recorded seditions are (1) the revolt against the decemvirate in 449 (Livy iii. 50 ff.); (2) a plebeian secession to the Janiculum in the struggle for the Canuleian law (Florus i. 25); (3) a state of anarchy in 376 (Diod. xv. 61. 1), which, according to Matzat (*Röm. Chron.* ii. 110), lasted about four months; (4) a state of anarchy in the struggle for the Licinian-Sextian laws (Diod. xv. 75. 1; Livy vi. 35. 10), which, according to Matzat (ibid. ii. 112), continued three years, 376–373; (5) a secession of the plebs to the Janiculum in the struggle which resulted in the Hortensian legislation, 287 (Livy, ep. xi; Dio Cass. Frag. 37; Zon. viii. 2. 1).

[6] P. 104, 110, 116 f.

[7] X. 47. 1.

the tribunes resigned because of a faulty election, held probably in violation of oblativa. In general, however, the plebeian gathering was relatively free from religious control till after the enactment of the Aelian and Fufian laws (about 150).[1] It had the advantage of the comitia centuriata (1) in freedom from the impetrative auspices, (2) in freedom from the patrum auctoritas, (3) in mobility. Immediately after the adoption of the Valerian-Horatian statute it must have become evident that the tribunician assembly, through the character of its presidency, its composition, and its democratic spirit, was to outstrip the centuriate gathering in energy and aggressiveness, and to be in a word the chief factor of progress in legislation.

No enactment affecting the jurisdiction of tribunes is referred to Valerius and Horatius by the ancient writers; and yet the arrangement by which they thereafter brought their capital actions before the centuries could not have been made without the consent of the government. If, on the other hand, the tribunes now possessed an unconditioned power to subject patricians, whether magistrates or private citizens, to capital prosecutions, they would have found it so effective a means of political warfare as no longer to need obstruction and sedition in their struggle for plebeian rights. In capital cases the permission of a higher magistrate, ordinarily after 367 the praetor, was required; and before the enactment of the Hortensian statute, we may well believe, the tribunes had no means of forcing this permission. Some similar restriction must have been placed on their liberty to bring finable actions.

The comitia tributa under tribunician presidency had at length become an effective constitutional factor in legislation and in jurisdiction. But its action in the former sphere was dependent upon the favor of the senate, in the latter on that of a patrician magistrate. The range, too, of its legislation was restricted by the wide administrative powers of the senate. We shall find it in the following period winning freedom and enlarging the field of its activity.

The following literature is for the whole period from 449 to 287.

Schulze, C. F., *Volksversammlungen der Römer*, 341–70; Hüllmann, K. D., *Staatsrecht des Altertums*, 354–67; Niebuhr, B. G., *Römische Geschichte*, i.

[1] P. 116 f.

624 ff., Eng. 283 ff.; see also index, s. Tributcomitien; Schwegler, A., *Röm. Geschichte*, see index, s. Tributcomitien; Mommsen, Th., *Röm. Staatsrecht*, iii. 300 ff.; *Röm. Forschungen*, i. 151–66; *Röm. Strafrecht*, 462–8, 473–8, 1014–6, et passim; Ihne, W., *History of Rome*, bk. VI. chs. i, viii; *Ueber die Entstehung und die ältesten Befugnisse des röm. Tribunats*, in *Rhein. Mus.* N. F. xxi (1866). 161–79; *Entwickelung der Tributcomitien*, in *Rhein. Mus.* N. F. xxviii (1873). 353–79; Peter, C., *Gesch. Roms*, bks. ii, iii; Lange, L., *Röm. Altertümer*, i. 586–681, 821–56; ii. 459–94, 533–42, 565–97, 613–42; *De legibus Porciis libertatis civium vindicibus*, in *Kleine Schriften*, i. 342–429; *De plebiscitis Ovinio et Atinio disputatio*, ibid. ii. 393–446; *Ueber das poetelische Gesetz de ambitu*, ibid. ii. 195–202; Kleineidam, F., *Beitr. z. Kentniss d. lex Poetelia*, in *Festg. f. F. Dahn*, ii. 1–30; Ihm, *Ambitus*, in Pauly-Wissowa, *Real-Encycl.* i. 1800–3; Madvig, J. N., *Verfassung und Verwaltung des. röm. Staates*, i. 234–46; Voigt, M., *XII Tafeln*, i. 683–90; Karlowa, O., *Röm. Rechtsgeschichte*, i. 409; Girard, P. F., *Histoire de l'organisation judiciaire des Romains*, i. 149–59, 237 ff.; Puchta, G. F., *Cursus der Institutionen*, i. (10th ed. 1893) 166–9 (on lex and plebiscite); Mispoulet, J. B., *Institutions politiques des Romains*, i. 207–30; *Études d'institutions Romaines*, 66–81; Willems, P., *Droit public Romain*, 160 ff., 173 ff.; Greenidge, *Legal Procedure of Cicero's Time*, 327–49; Herzog, E., *Geschichte und System der röm. Staatsverfassung*, i. 153 ff., 189–96, 216 ff., 248–64, 279–88, 1128–88; *Glaubwürdigkeit der Gesetze bis 387 der Stadt; Lex Sacrata und das Sacrosanctum*, in *Jahrb. f. Philol.* xxii (1876). 139–50; Dupond, A., *De la constitution et des magistratures Romaines sous la république Romaine*, 75 ff.; Borgeaud, C., *Histoire du plébiscite*, 57–76, 117–67; Hallays, A., *Comices à Rome*, ch. iii; Morlot, E., *Comices électoraux sous la république Romaine*, ch. iv; Ptaschnik, J., *Die Wahl. der Volkstribunen vor der Rogation des Volero Publilius*, in *Zeitschr. f. österreich. Gymn.* xiv (1863). 627–38; *Publilische Rogation*, ibid. xvii (1866). 161–200; *Die Centuriatgesetze von 305 und 415 U. C.*, ibid. xxi (1870). 497–525; *Lex Hortensia 475 U. C.* ibid. xxiii (1872). 241–53; *Stimmrecht der Patricier in den Tributcomitien*, ibid. xxxii (1881). 81–102; Ruppel, K. W., *Teilnahme der Patrizier an den Tributkomitien;* Soltau, W., *Gültigkeit der Plebiscite*, in *Berliner Studien*, ii (1885). 1–176; Clason, D. O., *Kritische Erörterungen über den röm. Staat*, 30–9; Schmidt, J., *Die Einsetzung der röm. Volkstribunen*, in *Hermes*, xxi (1886). 460–6; Meyer, E., *Der Ursprung des Tribunats und die Gemeinde der vier Tribus*, in *Hermes*, xxi (1895). 1–24, controverted by Vassis, in *Athena*, ix (1897). 470 ff.; Pais, *Ancient Italy*, chs. xx, xxi; Garofalo, F. P., *L'origine e l'elezione dei tribuni e degli edili della plebe con un indice alfabetico dei loro nomi;* Podestà, G., *Il tribunato della plebe in Roma dalla secessione sul monte sacro all' approvazione della legge di Publilio Volerone;* Eigenbrodt, A., *De magistratuum Romanorum iure intercedendi;* Ackermann, H., *Ueber die raümlichen Schranken der tribunizischen Gewalt;* Tophoff, *De lege Valeria Horatia, Publilia, Hortensia;* Hennes, *Das dritte valerisch-horatische Gesetz und dessen Wiederholungen;* Long, G., *On the Passage in Appian's Civil Wars* (i. 8) *which relates to the Licinian Law*, in *Classical Museum*, iii (1846). 78 ff.; Kubitschek, *Aedilis*, in

Pauly-Wissowa, *Real-Encycl.* i. 448–64; Humbert, G., *Aedilis*, in Daremberg et Saglio, *Dict.* i. 95–100; Bloch, L., *Die ständische und soziale Kämpfe in der römischen Republik*; Willoughby, W. W., *Political Theories of the Ancient World*, ch. xvi; Strachan-Davidson, T. L., *Decrees of the Roman Plebs*, in *Eng. Hist. Rev.* v (1890). 462–74; Dreyfus, R., *Les lois agraires sous la république Romaine*, pt. I. chs. i–iii; De Sanctis, G., *Storia dei Romani*, I. chs. xiii, xiv, xvii; Billeter, G., *Gesch. d. Zinsfusses*, 115 ff.

CHAPTER XIII

THE COMITIA TRIBUTA AND THE RISE OF POPULAR SOVEREIGNTY

From 449 to 287

For a time after the Valerian-Horatian legislation the senate and magistrates, as was intimated at the close of the preceding chapter, maintained their authority but slightly impaired against the rising popular power. It is true that in 427 the centuries acquired the right to declare a war of aggression.[1] Defensive wars in behalf either of Rome or of an ally were regularly decided upon by the senate;[2] and the question whether the war was necessary for the safety of the state admitted of a broad interpretation.[3] From the beginning of the period to the year 321 treaties of peace and of alliance were still made either by a magistrate, with the authorization of the senate,[4] or more commonly by the senate itself, even though the alliance or offer of protection was such as to render war with other states inevitable;[5] and at the close of a conquest the senate disposed of the acquired territory and population.[6] Through its authority alone, till 332, the censor bestowed the perfect or the limited citizenship.[7]

[1] P. 230.

[2] Cf. Livy vi. 3. 2 (389); 33. 7 f. (377); vii. 19. 7 (353).

[3] Livy vi. 14. 1: "Dictator . . . minime dubius bellum cum his populis patres iussuros" (385). In 381 the senate decreed that the Tusculans should be punished with war (Livy vi. 25. 5), no mention being made of the people; and the declaration of war against the Latins in 340 appears to have been merely acclaimed by the people who chanced at the time to be in front of the senate-house; Livy viii. 6. 4–8.

[4] Livy v. 49. 2 (390).

[5] Livy iv. 58. 1 f.; v. 28. 5 (394); 50. 3 (390); vi. 10. 9 (382); vii. 19. 4 (353); 22. 5 (351); 38. 1 (343); viii. 2. 1 (341); 19. 1–3 (330); x. 11. 13 with 12. 1, 13 (298); 45. 4 ff. (293); p. 302.

[6] Livy viii. 11 f., 14 (340, 338). It punished for revolt; ibid. viii. 20. 7 (329).

[7] Livy vi. 26. 8; viii. 11. 16; p. 304.

In the affairs of peace it retained almost as absolute power of administration as in the preceding period.[1] We find it, accordingly, authorizing a magistrate to vow games and the erection of a temple in the event of victory,[2] providing for the restoration of the city after the Gallic conflagration,[3] for the building of temples,[4] introducing pay for military service,[5] levying the taxes,[6] dividing the public lands among the citizens,[7] founding colonies,[8] and recalling under penalty of death those who without permission had gone out to colonize a captured city,[9] directing the appropriate college to consult the Sibylline books,[10] and ordering the aediles to take measures against the inroad of foreign superstitions,[11] and the consuls to punish with rods and beheading the instigators to revolt among the allies.[12] It was in obedience to a decree of the senate that the consul, or military tribune with consular power, suspended his own imperium and that of his colleague or colleagues by the appointment of a dictator,[13] who had power to compel the resignation of all other magistrates.[14] Or the senate could directly order the magistrates to retire from office, with or without a scruple as to the auspices.[15] It rewarded successful commanders with triumphs[16] at the expense of the state[17] and in time of especial danger it armed the consuls with absolute imperium.[18] In the face of an opposing force so vast as here indicated, the assemblies for a time made slow headway. The development of their functions through the period between

[1] P. 273.

[2] Livy v. 19. 6 (396); cf. iv. 27. 1 (431).

[3] Livy v. 50 (390).

[4] Cf. Livy vii. 28. 5 f. (345).

[5] Livy iv. 59. 11 (406); p. 367. The statement of Diodorus, xiv. 16. 5, that the Romans voted to pay for military service does not necessarily point to an act of the assembly; and the opposition of the tribunes to the measure indicates that at least in Livy's opinion it was an act of the senate alone.

[6] Cf. the tributum for the new wall; Livy vi. 32. 1.

[7] Cf. Livy v. 30. 8 (393); p. 295, 310.

[8] Livy iv. 11; 47. 6; v. 24. 4; 30. 8; ix. 28. 8 (313); Vell. i. 14. 1; p. 310.

[9] Livy vi. 4. 5 (389).

[10] Livy v. 13. 5 (399).

[11] Livy iv. 30. 9 (428).

[12] Livy x. 1. 3 (303).

[13] Livy iv. 46. 10; 56. 8; vi. 11. 10; vii. 6. 12; 21. 9; vii. 3. 4; viii. 17. 3; 29. 9 (325).

[14] Livy v. 9. 6 (402).

[15] Livy v. 9; 17. 2 f. (397); 31 f. (392, 391); viii. 3. 4 (341).

[16] Livy viii. 16. 11; 20. 7; 39. 15 (322).

[17] P. 277, n. 4.

[18] Livy vi. 19. 3 (384).

the Valerian-Horatian and the Hortensian legislation will now be followed.

I. *Elective*

Appreciating the great possibilities of the tribunate, the patricians attempted to fill the college with men of their own rank. If we are to trust our authorities, an effort was made in that direction immediately after the fall of the decemvirs, when it was agreed that the pontifex maximus should preside over the tribal comitia for the election of the first tribunes of the plebs under the restored constitution.[1] Among the men chosen were some so closely attached to patrician interests that at the end of the year they secured the election of successors who coöpted into the college two patricians of consular rank.[2] At this crisis there was great danger that the college of tribunes might become a possession of the patricians. It was averted, however, by a certain tribune, L. Trebonius, who succeeded in carrying a law that whoever presided over the comitia for the election of tribunes should continue till ten tribunes were elected, the object being to preclude coöptation. The tribune who violated this law was to be burned alive.[3] That part of Livy's account which assigns the author of the law to the year 448 is improbable. A half century later (401) he informs us, it happened that two places left vacant in the college were again filled by the coöptation of patricians and, by the strangest accident, a Cn. Trebonius was among their colleagues. His complaint that the Trebonian plebiscite and the leges sacratae were being violated had, in Livy's opinion,[4] no result. Probability greatly favors the later date for the law, especially as an instance of coöptation is men-

[1] Livy iii. 54. 5, 9, 11 (449).

[2] Livy iii. 65. 1 (448). That the coöptation of tribunes was once legal is proved by a formula quoted by Livy iii. 61. 10. That the coöpted tribunes were patrician is now generally disbelieved (cf. Herzog, *Röm. Staatsverf.* i. 195) because it does not accord with the conventional view of a constitution kept in perfect working order from the beginning to the end of Roman history. The irregular is possible and is less likely to be invented.

[3] Livy iii. 65. 1–4; Diod. xii. 25. 3. Diodorus, who mentions the penalty, connects the law closely in time, as does Livy, with the reëstablishment of the constitution.

[4] V. 10. 11; 11. 1–3.

tioned between the two dates;[1] the name of Trebonius or of one or more patricians in the college of 448[2] was enough to lead the historian astray. The later date fits well the political condition of the time; the patricians, almost succeeding in monopolizing the military tribunate with consular power, proceeded to lay hands on the plebeian tribunate — a far more valuable prize. After 401, however, the Trebonian law proved effective in excluding patricians from the tribunate of the plebs. Henceforth all plebeian officials were elected by the tribes under tribunician presidency.[3]

In granting the tribal assembly a share in law-making the senate must have hoped to convert it into an organ of the patrician government. Shortly after the Valerian-Horatian legislation, accordingly, patrician magistrates began to convoke this assembly for the election of quaestors (447) — previously appointed by the chief magistrates[4] — and afterward of curule aediles (367),[5] military tribunes,[6] and other minor officials.[7]

II. *Judicial*

a. TRIBUNICIAN

By an arrangement referred to in the preceding chapter,[8] partly based on the law of the Twelve Tables relating to capital cases[9] and further developed in 449, possibly by an article of the Valerian-Horatian statute, a division of popular jurisdiction was made between the centuriate and the tribal assemblies, on the basis of a distinction in the nature, not of the crime, but of the penalty.[10] The tribes punished with fines, the centuries with the extreme penalty — banishment or death, to which was

[1] Livy iv. 16. 3 (439).

[2] Continuous fasti tribunicii, however, did not exist.

[3] Thereafter when a vacancy occurred during the year, it was filled by election; Appian, *B. C.* i. 13. 54; Plut. *Ti. Gracch.* 13.

[4] Tac. *Ann.* xi. 22; Cic. *Fam.* vii. 30. 1; cf. Gell. xiii. 15. 4.

[5] Livy ix. 46. 1 f.; xxv. 2. 7; Varro, *R. R.* iii. 17. 1; Cic. *Planc.* 20. 49; Piso, in Gell. vii. 9. 2.

[6] Sall. *Iug.* 63.

[7] Gell. xiii. 15. 4.

[8] P. 280.

[9] P. 241, 268.

[10] Cf. Cic. *Leg.* iii. 19. 45; Livy xxvi. 3. This subject is admirably presented by Lange, *Röm. Alt.* ii. 578–80.

always added total confiscation of property. The prosecutor, accordingly, first thought of the penalty, to which he then attempted to adapt the form of action. The people were not guided to their decision by legal formalities and precedents,[1] but were often swayed by the emotions of favor and anger.[2] No juror's oath was imposed upon them to decide according to law and without personal or party bias, such as the Athenian heliasts swore. If the prosecutor, in addition to believing that the case merited the severest punishment, hoped to persuade the people to vote the death or banishment of the accused, he pronounced a capital condemnation, and the case was accordingly appealed to the centuriate assembly. If on the other hand he doubted whether he would be able sufficiently to excite the anger of the populace against the accused, however heinous the crime may have been in his own opinion, he satisfied himself with a finable action, and allowed it to go before the tribes. Sometimes while the evidence was being taken in the latter form of action, the rage of the people was so inflamed against the accused that they clamored for the extreme penalty, in which case the prosecutor might change the form of action agreeably to their wishes.[3] The greater ease with which the tribes were summoned, together with the growing disinclination of the people to pronouncing the death penalty, induced the magistrates more and more to make use of finable rather than of capital actions. Fines were generally estimated in cattle and sheep till in 430 the consuls L. Julius and L. Papirius Crassus passed a centuriate law establishing a hundred pounds of copper as equivalent to an ox and ten to a sheep.[4] Probably the same law provided that no fine should exceed half the value of the estate on which it was levied.[5]

For the period immediately following 449 the authorities —

[1] Cic. *Inv.* i. 38. 68.

[2] Cf. Livy v. 11. 4; 12. 2; 29. 6 f.; viii. 33. 17; xxvi. 3. 6.

[3] Livy xxvi. 3. 6–9; p. 307 f., 322 above.

[4] P. 234, 269 above; Cic. *Rep.* ii. 35. 60; Livy iv. 30. 3. The equivalents are mentioned in connection with the lex Aternia Tarpeia; Gell. xi. 1. 2; Fest. 202. 11; 237. 13; ep. 144; Lange, *Röm. Alt.* i. 622; Herzog, *Röm. Staatsverf.* i. 172, 639. The law is no proof of the existence of coins at that time.

[5] Cato, *Orig.* v. 5; Fest. 246 (lex Silia); Cic. *Rep.* 35. 60; Livy iv. 30. 3; Karlowa, *Röm. Rechtsgesch.* i. 409; Lange, *Röm. Alt.* ii. 580.

uncritically as will soon be made evident — assign to the tribunes of the plebs a formidable jurisdiction in finable actions, not only over private persons,[1] but also, on account of official misconduct, over functionaries of every grade from ambassadors and tresviri coloniae deducendae to consuls and dictators. Such prosecutions were usually brought after the retirement of the accused from office. A chronological list of the principal cases reported will be instructive.

In 442 the three commissioners for conducting a colony to Ardea were prosecuted by the tribunes on the ground that, by enrolling Ardeates in place of Romans in the list of colonists, they had circumvented the law which called their commission into being. The action would probably have been finable; but the accused avoided trial by remaining in the colony.[2] In 423 M. Postumius and T. Quinctius, retired tribunes with consular power, were tried for mismanagement of the war with Veii. The former was fined 10,000 asses; the latter was exculpated by all the tribes.[3] In 401 two other retired tribunes with consular power were prosecuted by the tribunes of the plebs and fined each 10,000 asses.[4] The imposition of a fine on Camillus, 391, has already been considered.[5] In 389 a tribune of the plebs brought an accusation against Q. Fabius on the ground that the latter while ambassador to the Gauls had fought against them in violation of the law of nations. The accused suddenly died, possibly by suicide, before the day of trial.[6] In 362 the dictator of the preceding year, L. Manlius, was prosecuted by a tribune because, though appointed for the sole purpose of driving the nail, he had nevertheless made a levy of troops and that with extreme cruelty. But the prosecutor dropped the accusation, intimidated by the son of the accused.[7] This is the view of Livy, whereas Cicero[8] states the ground of the charge to have been the addition of a few days to his dictatorship. If

[1] Livy viii. 37. 8 ff. A tribune of the plebs brought before the tribes certain Tusculans, accused of having incited neighboring states against Rome, 323. They were acquitted; p. 310.

[2] Livy iv. 11. 3–7. This is one of the few prosecutions of inferior officials for maladministration; Mommsen, *Röm. Staatsr.* ii. 323, n. 2. The event is too early to be certain.

[3] Livy iv. 40. 4; 41. 10 f.; Lange, *Röm. Alt.* ii. 581.

[4] Livy v. 11. 4 ff.; 12. 1.

[5] P. 244 f.

[6] Livy vi. 1. 6.

[7] Livy vii. 3–5.

[8] *Off.* ii. 31. 112.

historical, the prosecution may possibly have been for perduellio, and in that case it would have come before the centuries.

The following cases are historically more certain. Lucius Postumius, prosecuted by the tribunes of the plebs in 293 for the misuse of his consulship of the preceding year, escaped trial by becoming the legatus of the consul Carvilius. The charge was that in his campaign he had not limited himself to the province assigned him by the senate.[1] Evidently the intention of the prosecutor was not serious.[2] The consul Q. Fabius Gurges of the year 292, defeated in battle, was recalled, and his conduct was impugned before the people. The past services and the promises of his father saved him, and he continued his consulship with greater success. The accusation probably did not take the form of a trial, but was presented in a resolution to remove him from office[3] or at least from the command of the army. L. Postumius, third time consul in 291, employed his army to work on his own estate; and on the expiration of his office he was brought to trial therefor by the tribunes and condemned.[4]

In the period under discussion, 449–287, a single effort to hold the plebeian tribunes responsible for their official conduct is reported. In 293 two retired tribunes were condemned to a fine of 10,000 asses each on a charge of having favored the patres by interceding against the proposals of colleagues.[5] This instance, if historical, is the only one of the kind before the revolution. The tribunes doubtless felt that the prosecution of their predecessors rendered their own future unsafe.

Several attempts were also made by legislation to reach results equivalent to judicial sentences. In spite of the prohibition of privilegia by a law of the Twelve Tables, Sp. Maelius, a tribune of the plebs in 436, tried to carry a resolution for the confiscation of the property of Servilius Ahala; but the

[1] Livy x. 37. 7; cf. xxix. 19. 6 f.; Mommsen, *Röm. Staatsr.* ii. 320, n. 3.

[2] Livy x. 46. 16.

[3] Livy, ep. xi; cf. p. 306 below.

[4] Livy, ep. xi; Dion. Hal. xvii. 4 f.; Dio Cass. Frag. 36. 32. Dionysius states the fine at 50,000 denarii.

[5] Livy v. 29. 6 f. Lange, *Röm. Alt.* i. 823; ii. 581, looks with suspicion on this case because it is the only one of the kind in the period. Mommsen, *Röm. Staatsr.* ii. 323, n. 1, considers it an anticipation of the condemnation of the tribunes in 84 for having taken the side of Sulla.

people rejected it.[1] Another privilegium was the resolution of the plebs of 368 which threatened M. Furius Camillus with a fine of 500,000 asses, should he use his dictatorship to obstruct the Licinian-Sextian bills then under discussion.[2] It was certainly not supported by a senatus consultum, and probably the proposers had no serious intention of carrying it into effect.

In reviewing the finable actions alleged to have been brought by the plebeian tribunes during the two centuries which intervened between the institution of their office and the Hortensian legislation, as in the case of the capital actions,[3] we are struck by the relatively small number belonging to the latter part of the period; in fact to the time following 362 two cases only are assigned, one of which is insignificant. The conclusion we must draw from this fact is similar to that expressed with relation to the capital cases — that the finable actions attributed to the earlier period are in all probability largely unhistorical, and that before the enactment of the Hortensian law the jurisdiction of the tribunes in finable cases was limited and rare.

b. AEDILICIAN

For some time after their institution the tribunes of the plebs, having no viatores or at least none that were recognized as public officials,[4] depended upon the two plebeian aediles as bailiffs for making arrests and for executing sentences.[5] The latter functionaries seem to have stood in some such relation to the tribunes as the quaestors toward the consuls. It was accordingly as deputies of the tribunes that they acquired jurisdiction.[6] The earliest mentioned case, 454, is the trial and condemnation of a retired consul in a finable action for official misconduct.[7] It should be placed in the same mythi-

[1] Livy iv. 21. 3 f. [2] Livy vi. 38. 9; Plut. *Cam.* 39. [3] P. 247, 248, n. 1.

[4] Cf. Mommsen, *Röm. Staatsr.* ii. 282, 475. In time the aediles themselves received viatores through a lex Papiria of unknown date; *CIL.* vi. 1933.

[5] Dion. Hal. vii. 35. 4; Plut. *Cor.* 18. For this reason tribunician sentences continued to the end to be executed by a tribune or an aedile; Mommsen, *Röm. Staatsr.* i. 146.

[6] Dion. Hal. vi. 90. 2; cf. 95. 4; Zon. vii. 15. 10.

[7] Livy iii. 31. 4–6; Dion. Hal. x. 48; Pliny, *N. H.* vii. 29. 201.

cal category with the numerous tribunician prosecutions of the period.[1] After the institution of curule aediles, 367, the aediles of the plebs continued indeed to serve occasionally as bailiffs of the tribunes,[2] but acquired in addition, along with those of curule rank, an independent jurisdiction. In 357 C. Licinius Stolo was prosecuted by M. Popillius Laenas on the charge of having circumvented his own law by emancipating his son in order that he and his son might each possess five hundred iugera of the public land. He was fined 10,000 asses.[3] From the cases to be mentioned below the inference may be drawn that the accuser was an aedile. In 298 several persons were prosecuted by the aediles, whether curule or plebeian is not stated, for violation of the same law, and hardly one was acquitted.[4] In 295 the plebeian aediles made considerable money by fining those who had trespassed against the article of the Licinian-Sextian statute which related to pasturage;[5] and two years afterward violators of the same provision were again fined, on this occasion by the curule aediles.[6] Actions against usurers were brought by aediles in 344,[7] 304,[8] and 295.[9]

Shortly before 328, M. Flavius was prosecuted before the people by the aediles for the crimen stupratae matris familiae, and acquitted.[10] In 295 Q. Fabius Gurges, a curule aedile,[11]

[1] P. 264, 272. Mommsen, *Röm. Staatsr.* ii. 475, n. 3, however, who looks upon it as a legally credible tradition, remarks that the competence of the aediles, at that time coextensive with that of the tribunes, must afterward have been limited by the Twelve Tables.

[2] As in 204, when an aedile was sent to arrest Scipio, should circumstances favor his apprehension: Livy xxix. 20. 11; xxxviii. 52. 7. More frequently they executed the sentence; p. 290, n. 5.

[3] Livy vii. 16. 9; Dion. Hal. xiv. 12 (22); Pliny, *N. H.* xviii. 3. 17; Plut. *Cam.* 39; Val. Max. viii. 6. 3. [4] Livy x. 13. 14; cf. Greenidge, *Leg. Proced.* 341.

[5] Livy x. 23. 13. We are not informed whether these cases came before the assembly. [6] Livy x. 47. 4.

[7] Livy vii. 28. 9. The rank of the prosecutor cannot be more definitely stated.

[8] Pliny, *N. H.* xxxiii. (6.) 19. The accuser, Cn. Flavius, was curule aedile; Livy ix. 46. 1. [9] Livy x. 23. 11 f. The prosecutors were curule aediles.

[10] Livy viii. 22. 3; Val. Max. viii. 1. 7. Fourteen of the twenty-nine tribes then existing had declared against him, when the prosecuting aedile by an unintentional expression turned the vote in his favor. This result is to be explained on the supposition that the proceedings were at that point interrupted, and the whole vote taken again; Lange, *Röm. Alt.* ii. 486.

[11] Mommsen, *Röm. Staatsr.* ii. 493, n. 3; Lange, *Röm. Alt.* ii. 584. From the

accused several matrons before the people, also of stuprum, and fined them.

In the period between the Licinian-Sextian and the Hortensian legislation, accordingly, the jurisdiction of the aediles, so far as is known, was limited to usury, stuprum, and the violation of laws regarding the occupation and pasturage of the public land. They had nothing to do with perduellio or related offences, or with the accountability of magistrates, or with any capital actions whatsoever. All their trials were finable, and in case the fine exceeded thirty cattle and two sheep, or the equivalent, 3020 heavy asses,[1] an appeal could be made to the tribes. The plebeian aediles equally with the tribunes[2] lacked the power to summon patricians, whereas the curule aediles as patrician magistrates[3] possessed the right; but no distinction in the composition of these tribal assemblies, corresponding to the form of presidency, is suggested by the sources.[4]

III. *Legislative*

The legislative function of the tribal assembly under tribunician presidency after the decemvirate (451–450)[5] is represented as bringing forthwith into being the Icilian and Duillian plebiscites of 449. That of Icilius granted amnesty to those who had seceded from the decemvirs.[6] The first plebiscite of Duillius provided for the election of consuls cum provocatione.[7] Both acts are alleged to have been passed, however, before the resolutions of the plebs had acquired the force of law. The second Duillian plebiscite, which followed the enactment of the Valerian-Horatian statute, and which was therefore valid for all the citizens, threatened with scourging and death any one who left the plebs without tribunes or who caused the election of a magistrate without appeal.[8] Its first provision was merely the expression of a principle on which the plebeians had from the beginning insisted as essential to the continuance of the office from year to year;[9] the second clause precluded the recurrence

nature of the process we infer that it was aedilician; and as the accuser was a patrician, his aedileship must have been curule.

[1] P. 233, 269, 287. [2] P. 264. [3] P. 103. [4] P. 102, n. 1.
[5] P. 273 ff. [6] Livy iii. 54. 14. [7] Ibid. § 15. [8] Livy iii. 55. 14.
[9] Mommsen, *Röm. Staatsr.* ii. 279, n. 1, 302.

of an elective magistracy like the decemvirate just past.[1] According to Diodorus[2] an agreement was made in this year between the patricians and plebeians by which one consul at least should be a plebeian. Although Diodorus generally drew from sources more ancient than those of Livy, he is wrong in assigning this provision to so early a date.[3]

For the same year is recorded another Icilian plebiscite, which granted the privilege of a triumph to the consuls after the senate had refused it.[4] The alleged act is suspicious, in the first place, because the two consuls must have had the support of a majority in the senate, as the acceptance of their great constitutional statute proves. Then, too, a resolution of the people for granting the triumph could not avail in this period without the consent of the senate. The last observation applies as well to the alleged refusal of the senate to ratify an act of the people in 356 for granting a triumph to the first plebeian dictator.[5] Such a resolution merely assured the triumphator that the people would be present at the festival. Without the consent of the senate, they could not appropriate the necessary funds for the occasion;[6] but the general always had a right to triumph, in earlier time within the city and later on the Alban Mount, at his own expense.[7] If the senate decreed the triumph,

[1] We have no means of testing the historical truth of these three alleged plebiscites. The first Icilian was of transient character, and the first Duillian was unnecessary, though not especially suspicious on that account. The second Duillian represents constitutional principles known to have been early established. They are doubted by Herzog, *Röm. Staatsverf.* i. 149 f.

[2] XII. 25. 2. He does not state that this arrangement was embodied in a law, although otherwise it could not have been effective.

[3] Pais, *Stor. di Rom.* I. i. 558 f. The fact that Fabius Pictor (in Gell. v. 4. 3) places the election of the first plebeian consul in the twenty-second year after the Gallic conflagration indicates (1) that Diodorus did not depend upon Fabius, (2) that Livy's view of this constitutional change is essentially that of Fabius; cf. Pais, ibid. I. ii. 136, n. 2.

[4] Livy iii. 63. 8–11; Dion. Hal. xi. 50. 1; *Act. Triumph. Capit.*, in *CIL.* i². p. 44; cf. Herzog, *Röm. Staatsverf.* i. 194.

[5] Livy vii. 17. 9; *Act. Triumph. Capit.*, in *CIL.* i². p. 44. In this case it is possible that the senate for a time resisted, to yield finally under pressure.

[6] Cf. Polyb. vi. 15. 8; Dio Cass. Frag. 74. 2; Lange, *Röm. Alt.* ii. 623.

[7] Postumius, consul in 294, when refused a triumph by the senate, refrained from bringing the case before the people because he foresaw tribunician resistance, but declared his intention to triumph by right of his consular imperium; Livy x. 37.

as remained the rule,[1] ratification by the people was unnecessary, though it sometimes occurred.[2]

The Trebonian plebiscite, 448 or more probably 401, has already been discussed.[3] The interest of the plebs in enhancing the dignity and importance of their own order manifested itself not only in this act but also in the Canuleian plebiscite of 445, which reëstablished conubium between the patricians and plebeians after it had been forbidden by a law of the Twelve Tables.[4] Closely related is the centuriate law of the same year for the institution of tribunes of the soldiers with consular power to be elected indiscriminately from the two social classes.[5]

Slightly earlier, if we may trust our sources, the people were given an unwonted opportunity to share in the decision of questions relating to foreign affairs; and the favor fell to the comitia tributa under patrician presidency, which had convened in this form for the first time in 447 for the election of quaestors.[6] The question before this assembly in 446 was the arbitration of a dispute between Ardea and Aricia concerning a piece of territory. The contestants brought the case before the Roman senate, which usually decided such matters on its own responsibility, but which in this instance requested the consuls to refer the business to the tribes. The aim of the senate must have been to throw the odium of the decision upon the people, who, disregarding the claims of the two contestants, lost little time in adjudging the disputed property to Rome.[7] This act did not serve as a precedent for further interference of the as-

6–12; Dion. Hal. xvii, xviii. 5. 3 (18); *Act. Triumph. Capit.* in *CIL.* i². p. 45. Q. Minucius, consul in 197, when refused by the senate, asserted that he would triumph on the Alban Mount, also by right of his consular imperium and after the example of many illustrious men; Livy xxxiii. 23. 3; *CIL.* i². p. 48; cf. Mommsen, *Röm. Forsch.* i. 214 f.; *Röm. Staatsr.* iii. 134.

[1] P. 273, 284. [2] Cf. Livy iv. 20. 1; vi. 42. 8. [3] P. 285; cf. p. 301.

[4] Cic. *Rep.* ii. 37. 63; Livy iv. 1–6; Flor. i. 17. 25. The commonly accepted theory that this decemviral enactment merely confirmed a custom which had existed from the beginning of Rome is supported neither by the sources nor by a comparison of early usage in other states.

[5] P. 234. [6] P. 286.

[7] Livy iii. 71 f.; Dion. Hal. xi. 52. Herzog, *Röm. Staatsverf.* i. 198, n. 4, finds difficulties in the details; but we are not warranted in denying the truth of the event on the ground of irregularity in the proceedings, even while we admit that much is uncertain in the history of the period to which the act is assigned.

sembly in foreign affairs; and when in 427 the people acquired the right to declare an offensive war,[1] the function fell to the centuries rather than to the tribes. Apart from this gain the comitia made little progress[2] in the period between the Canuleian and the Licinian-Sextian legislation, 445–367. Few legislative acts of the tribes are recorded: the plebiscite which provided in a time of famine for the election of a prefect of the market, 440;[3] the historically questionable plebiscite which forbade candidates for office to whiten their garments, 432;[4] the plebiscite of 414 for the creation of a special court to try a case of murder;[5] the act, probably a plebiscite, which forbade a patrician to dwell on the Capitoline, 384.[6]

Doubtless in this period there was much agrarian agitation on the part of the tribunes, although we cannot be sure that any of the bills mentioned by Livy[7] are historical. In like manner the leaders of the plebs, as candidates for the consular tribunate, are represented as agitating for the institution of pay for military service, the money to be derived from rents of public lands.[8] When the reform came, however, it was by a voluntary concession of the senate extremely annoying to the tribunes, who found themselves thus deprived of a useful ground for complaint, 406.[9] Epoch-making were the Licinian-Sextian laws,

[1] P. 230, 283.

[2] The institution of new offices and the increase in number within existing magisterial colleges by act of the centuries (cf. p. 234) is merely the application of a long-recognized popular right.

[3] Livy iv. 12. 8. This alleged act of the tribes is suspicious because of its isolation; for in this period offices were instituted by the centuries. It is either exceptional or an anticipation of later usage; cf. p. 306.

[4] Livy iv. 25. 13 f. The same author, vii. 15. 12 f., states that the first lex de ambitu was enacted in 358; p. 296.

[5] Livy iv. 51. 2 f.; Flor. i. 17. 2 (22); Zon. vii. 20. 5. The act, like that of 440, is either exceptional or an anticipation of later usage; cf. p. 309.

[6] Livy vi. 20. 13. The context indicates that in Livy's opinion it was a resolution of the plebs. Dio Cass. Frag. 25.

Whether the order of the people, 437, directing the dictator at public expense to present a golden crown of a pound weight to Jupiter was dictatorial or tribunician cannot be determined; Livy iv. 20. 4.

[7] Cf. iv. 48. 1; 53. 6; v. 12. 3; vi. 5. 2; 6. 1.

[8] Livy iv. 36. 2 (424).

[9] Livy iv. 59. 11; Diod. xiv. 16. 5; Zon. vii. 20. 6; Flor. i. 6 (12). 8; cf. Lange, *Röm. Alt.* i. 540, 668 f.; ii. 627; Herzog, *Röm. Staatsverf.* i. 212 f.; p. 284 above.

the first, 368, increasing the duoviri sacris faciundis to decemviri and providing that five should be plebeian,[1] the second, 367, containing in Livy's opinion four articles: (1) that one consul must be plebeian,[2] (2) that the interest already paid on debts should be deducted from the principal and the balance rendered in three equal annual instalments, (3) that no one should occupy more than five hundred iugera of the public land,[3] (4) that the right to pasture cattle and sheep on the public land should also be limited.[4]

Thereafter we find the tribal assembly more active in legislation. To the year 358 is assigned the first well-authenticated lex de ambitu, the Poetelian plebiscite, which forbade candidates for office to visit markets and meeting-places outside the city for electioneering purposes.[5] The motive, however, which Livy attributes to the author — to prevent the further enlargement

[1] Livy vi. 42. 2; cf. Wissowa, *Relig. u. Kult. d. Röm.* 461.

[2] The word utique, "at least," inserted in this article by Livy, vi. 35. 5, belongs to the Genucian law of 342; p. 299.

[3] Livy vi. 35. 4 f.; 42. 9; xxxiv. 4. 9.

[4] In his account of the Licinian-Sextian legislation he makes no mention of this last regulation, but assumes its existence for the following period; cf. p. 291 f., on aedilician prosecutions for violations of this article.

Other sources for the second Licinian-Sextian plebiscite are Varro, *R. R.* i. 2. 9; Plut. *Cam.* 39; *Ti. Gracch.* 8; Appian, *B. C.* i. 8. 33; Vell. ii. 6. 3; Val. Max. viii. 6. 3; (Aurel. Vict.), *Vir. Ill.* 20.

The statute, especially the agrarian portion, is discussed by Meyer, in *Rhein. Mus.* xxxvii (1882). 610–27; Niese, in *Hermes*, xxiii (1888). 410–23; *Röm. Gesch.* 55, 148; Soltau, in *Hermes*, xxx (1895). 624–9; Pais, *Stor. di Rom.* I. ii. 72 ff., 134 ff. Niese refuses to believe that this agrarian legislation came so early, and prefers a date shortly after the close of the war with Hannibal. Soltau, controverting Niese's view, insists that the chief regulation mentioned by Livy — the limitation of occupation to five hundred iugera — belongs to Licinius and Sextius, and that the article was afterward renewed, with the addition of the other provisions stated by Appian, probably about the time of the Hortensian legislation. Against the earlier date is especially urged the circumstance that the large number of iugera allowed to the individual is incongruous with the narrow limits of the Roman territory at that time. The provision for the relief of debtors, too, has the appearance of an anticipation of a plebiscite on the same subject passed in 447; p. 298 below; cf. Matzat, *Röm. Chron.* ii. 113, n. 9; 128, n. 6.

[5] Livy vii. 15. 12 f.; Isler, *Ueber das poetelische Gesetz de ambitu*, in *Rhein. Mus.* xxviii (1873). 473–7; Lange, *Kleine Schriften*, ii. 195–213; *Röm. Alt.* i. 716; Herzog, *Röm. Staatsverf.* i. 241 f.; Ihm, in Pauly-Wissowa, *Real-Encycl.* i. 1801; cf. p. 295 above.

of the patricio-plebeian nobility through the admission of new men — was hardly possible at this early date.

In 357 tribal comitia under patrician chairmanship passed a law for placing a tax of five per cent on manumissions of slaves. The circumstances attending this meeting were peculiar; the consul Cn. Manlius summoned to it the soldiers of his army in the camp at Sutrium.[1] It must have been composed, therefore, of a small minority of the citizens, lacking not only those who were too old for service, but doubtless a majority of the men of military age. Difficulties regarding the auspices, too, and other formalities might have arisen; and yet in spite of the fact that the enactment of the law was an intrusion within the administrative domain of the senate, the patres gave their sanction;[2] and the legality of the measure was never called in question.[3] In contrast with the general prevalence of free labor in early Rome, the number of slaves since the conquest of Veii had become considerable; and wealthy individuals were evidently beginning the practice of building up a political following through the clientage of their freedmen, to the disadvantage of the older plebs. The majority of the patricians must have been in sympathy with the effort of their consul to check this new development, although they could not approve the peculiar means by which the law was passed. Nor could the tribunes of the plebs allow legislation to be thus removed beyond the sphere of their control. The repetition of the procedure was immediately forbidden accordingly by a plebiscite which threatened with the death penalty any magistrate who held comitia away from the city.[4] In the same year the people took a further step in the administration of finance by enacting the Duillian-Menenian plebiscite for establishing the rate of interest at ten per cent[5] — thereby confirming a law of the Twelve Tables[6] — and five years later the consular law of

[1] P. 202.

[2] P. 235, 314.

[3] Livy vii. 16. 7 f.; cf. Herzog, *Röm. Staatsverf.* i. 246–8; Lange, *Röm. Alt.* i. 191; ii. 26, 621.

[4] Livy vii. 16. 8.

[5] Livy vii. 16. 1. Two laws of 356 have a certain degree of financial interest: the dictatorial law which made provision for an impending war (Livy vii. 17. 7); and the alleged resolution of the people (p. 293) to grant the same dictator the privilege of a triumph.

[6] Tac. *Ann.* vi. 16; cf. Herzog, *Röm. Staatsverf.* i. 183, n. 3.

P. Valerius Publicola and C. Marcius Rutilus for the institution of a bank under the direction of five commissioners to assist debtors in meeting their obligations (352).[1] The latter was followed in 347 by a plebiscite which reduced the maximal rate of interest to five per cent and provided for the payment of the principal in four equal annual instalments.[2]

This activity of the people in financial legislation is to be explained by the economic distress which lasted many years, and which the measures thus far mentioned failed to remedy. There can be no doubt that the general indebtedness and the resultant discontent of the masses, assigned by the annalists to the earliest years of the republic, belong in reality to the period now under consideration. The murmurings of the debtors culminated in 342 in a military mutiny, with which the masses of citizens seem to have been in full sympathy. The demands of the soldiers and civilians were met (1) by a law of the dictator Valerius, which, remedying other grievances of the soldiers, is said to have proclaimed an abolition of debts,[3] (2) by the plebiscite of L. Genucius, tribune of the same year. The provisions of the latter were as follows: (1) it forbade the lending of money on interest; (2) it ordered that no one should fill the same office within a period of ten years, or two offices at the same

[1] Livy vii. 21, 5; cf. Herzog. *Röm. Staatsverf.* i. 245. That the bank commission owed its existence to a law is an inference from the circumstances. The form of assembly is unknown. With this Valerian-Marcian law, 352, Lange, *Röm. Alt.* ii. 621 f., conjecturally identifies the lex Marcia against usurers; Gaius iv. 23. In his opinion also (ibid. ii. 622; cf. Rudorff, *Röm. Rechtsgesch.* i. 51) the lex Furia de sponsu mentioned by Gaius, iii. 121; iv. 22, "discharging the sponsor and fidepromissor of liability in two years and limiting the liability of each to a proportionate part" (Poste's interpretation) belongs to L. Furius, dictator in 345 (Livy vii. 28. 2); whereas others assign it to the year 95 (cf. Poste, *Gai. Inst.* 359) and others to a time subsequent to Cicero (cf. Roby, *Rom. Priv. Law*, ii. 30). It was later than the lex Appuleia de sponsu, which is referred to by Gaius iii. 122, and which must have been enacted after the establishment of the provincial system. It is to be attributed, accordingly, to the famous tribune of 103, 100 (Poste, ibid. 359) rather than to the like-named tribune of 390 (Livy v. 32. 8; Lange, *Röm. Alt.* ii. 621). These considerations render the later dating of the lex Furia the more probable. The lex Publilia de sponsu, the date of which is also unknown, granted the surety (sponsor) an action against the principal debtor in case the latter failed to reimburse him within six months; Gaius iii. 127; iv. 22, cf. 171.

[2] Livy vii. 27. 3; Tac. *Ann.* vi. 16. The author is not named.

[3] P. 238.

time; (3) it allowed both consuls to be plebeian.[1] Although Livy, failing to find the Genucian law in all his sources, hesitates to accept it as historical, there seems to be no cogent ground for disbelieving that such a statute was actually passed.[2] The legal rate of interest had recently been lowered one-half; and the plebeians, not satisfied with the temporary relief afforded by the cancellation of debts, hoped for all time to free themselves from an intolerable affliction by one sweeping legislative act. This article of the plebiscite, however, probably remained from the beginning a dead letter. The second continued unenforced for many years,[3] whereas the provision regarding two consuls had to wait more than a century for its first practical application.[4] The patricians had often violated the Licinian-Sextian statute by placing two of their number together in the consulship. Perhaps the third article of the Genucian law was intended to make them respect the earlier statute by a threat to exclude them entirely from this office. If this was the object of Genucius, his means certainly proved effective.[5]

Three years later the dictator Publilius Philo passed through the centuriate assembly the statute (1) that plebi scita should be

[1] Livy vii. 42. 1–3. Appian, *B.C.* i. 54, testifies to the existence of an ancient law forbidding interest; cf. Tac. *Ann.* vi. 16.

[2] Pais, *Stor. di Rom.* I. ii. 270, with his usual acumen has argued against the existence of the Genucian as well as of the Publilian statute; but the reasons urged by this eminent scholar do not seem to me to be convincing. The period in which they fall is certainly within the reach of tradition. The abolition of debts through the Valerian law was in keeping with the populistic spirit of the masses in that age, as was the prohibition of interest.

[3] Pais, *Stor. di Rom.* I. ii. 278, n. 4: "Thus C. Junius Bubulcus and Aemilius Barbula, consuls in 317, reappear in 311 B.C.; L. Papirius Cursor is consul in 320, 319, 315, 313; P. Decius is consul in 312 and in 308," etc.; cf. further Mommsen, *Röm. Staatsr.* i. 519, n. 5. It is true that on one occasion Livy, x. 13. 8 f. (298), speaks of the law and of a proposal of the tribunes to obtain a dispensation for the candidate Fabius by a vote of the people, oblivious of the violation of the law by this same Fabius as well as by many others.

[4] Livy xxiii. 31. 13 f.; Plut. *Marc.* 12 (215). On that occasion when the people were told that the election of two plebeians as colleagues in the consulship was displeasing to the gods, they proceeded to choose a patrician in place of the second plebeian; cf. Herzog, *Röm. Staatsverf.* i. 253, n. 2. The first definitive election of two plebeians was in 172; *Fast. Cos. Capit.*, in *CIL.* i². p. 25: "Ambo primi de plebe."

[5] Cf. Herzog, *Röm. Staatsverf.* i. 253.

binding on all the quirites; (2) that before the voting began the patres should give their auctoritas to proposals brought before the comitia centuriata; (3) that one censor at least should be plebeian (339).[1] All three articles were alike aimed against the political dominance of the patricians. The second freed centuriate legislation from their control;[2] the third[3] assured to the plebeians a just share in the function of determining the composition of the tribes, hence of the civil and political status of every Roman. It was not long afterward that the censors were to be given in addition the function of revising the list of senators.[4]

The first article has substantially the same form as the corresponding provision of the Valerian-Horatian statute, 449, and of the Hortensian, 287.[5] All manner of conjectures as to the relation of these three laws to one another has been offered, the readiest theory being that the Valerian-Horatian statute had become obsolete, and required reënactment.[6] The explanation is proved impossible by the circumstance that important plebi scita were passed under the Valerian-Horatian provision, the last being the Genucian. The Valerian-Horatian law could not have become obsolete in three years. The true explanation is to be found in the fact, now well known to historians, that the political ideas and political struggles assigned by our sources to the fifth century B.C. belong mostly to the fourth. The setting of the law of Publilius Volero, 471, was inaccurately transferred to it from the law of Publilius Philo, 339. The very existence of the latter statute is proof that the patricians were at that time declaring plebi scita invalid on the ground that they were passed by only a part of the people — a complaint recorded against neither the Canuleian nor the Licinian plebiscite. Hence, as the sources indicate, the patricians were in the assembly which passed these two measures. We may legitimately apply to the period from 449 to 339 the story of

[1] Livy viii. 12. 14–16.
[2] P. 235.
[3] P. 237.
[4] P. 307.
[5] P. 274, 313.
[6] The most detailed study of this subject, including a critique of the principal modern views, is made by Soltau, *Gültigkeit der Plebiscite*, in *Berl. Stud.* ii (1885). 1–176. His criticism is more satisfactory than his construction.

the long but finally successful struggle on the part of the tribunes to expel the patricians from the comitia tributa under plebeian chairmanship — a story which the sources assign to the period ending in 367. The struggle must be accepted as historical, for there was in later time no motive for creating it; and as it must have been a matter of tradition rather than of record, it could not well be placed earlier than the fourth century B.C. We may suppose that the patricians yielded the more readily because they at last recognized their inability simply by their votes to control the tribunician assembly, and because from the beginning they disliked to submit to the authority of a plebeian president. Hence their withdrawal from that form of comitia was in the first instance voluntary. The assembly, therefore, which adopted the Genucian plebiscite was de facto, though not de jure, exclusively plebeian. When accordingly the patricians objected to its validity on the ground that it was passed by but a part of the people, Publilius Philo, the most eminent plebeian statesman of his age, carried through the centuriate assembly the law above mentioned, that the resolutions of the tribunician assembly as then constituted, of plebs only, should be valid for all the people. This interpretation throws light on the otherwise inexplicable circumstance that the Genucian plebiscite was so indifferently enforced. The exclusion of the patricians was in line, too, with the general policy followed by the plebeians against them in the fourth century: the plebeians shut the patricians out (1) from the plebeian tribunate, probably 401, (2) from five places in the college of decemviri sacris faciundis, 368, and from one of the consular places, 367, (3) by agreement from the two curule aedileships on alternate years, (4) from one of the censorial places, 339, (5) from a fixed number of places in the college of augurs and of pontiffs, 300. It was in accord with this tendency to convert the earlier privileges of the patricians into disabilities that a vote of the people excluded them from those comitia tributa which were presided over by tribunes. This state of affairs was formulated in the antiquarian and juristic definitions of populus and plebs, lex and plebi scitum. The condition, however, seems to have been only transient. The dwindling of the patriciate in numbers and strength, with

the corresponding growth of a plebeian nobility, which converted the tribunate and assembly of plebs into most potent organs of the senatorial government, obliterated distinctions between patricians and plebeians within the political assemblies, to such a degree that for the period after the Hortensian legislation no reference to an exclusively plebeian assembly is made by any ancient author. Although this article of the Publilian statute was never formally repealed, we may feel certain that the principle involved was no longer remembered in the age of Cicero.[1]

The Publilian statute of 339 is not known to have provided for an extension of the field of competence of the tribal assembly; yet we find the comitia tributa soon afterward attending to business heretofore managed by the senate or in one or two instances by the centuries. Although about a hundred years earlier the centuriate comitia had acquired the right to ratify or reject declarations of offensive war,[2] we find no record of a ratification of a treaty of peace by the people before the year 321, in which occurred the disaster at Caudium; and in this case it was not only the common opinion in Livy's time, but also the understanding of Claudius, the historian, that the treaty made by the consuls, without the sanction of the senate or the people, was regular and valid[3] — a "foedus summae religionis," as Cicero declares.[4] Even Livy, who aims to prove the procedure defective, admits that the tribunes of the plebs[5] and Postumius,[6] one of the consuls who made it, looked upon it

[1] This point is established by the circumstances (1) that no writer of the period refers to the principle mentioned; (2) that Cicero regards the thirty-five tribes under tribunician presidency as the universus populus Romanus — a definition which is incompatible with the legal exclusion of the patricians from that form of assembly (p. 129 f.); (3) that on one occasion, 209, after the Hortensian legislation Livy (xxvii. 21. 1–4) represents the voting assembly under tribunician presidency as composed not only of plebs but of all ranks (concursu plebisque et omnium ordinum), and that the patricians were evidently free to take part in the debates of the concilium; cf. Livy xliii. 16. 8; (4) Caesar, *B. C.* iii. 1, seems to represent the praetors and tribunes as presiding together over the same comitia ("praetoribus tribunisque plebis rogationes ad populum ferentibus") — which would prove that no difference of composition existed between the pretorian and the tribunician assemblies of tribes. [2] P. 230. [3] Livy ix. 5. 2. [4] *Inv.* ii. 30. 92.

[5] Livy ix. 8. 14: the tribunes protested against breaking it.

[6] Livy ix. 10. 10: the circumstance that he assaulted the Roman fetialis is sufficient evidence of his view.

as legitimate. But according to Livy[1] the senate itself declared the treaty invalid on the ground that it lacked popular confirmation;[2] and in that body the principle was then enunciated that nothing which was to bind the people could be sanctioned without their order[3] — the first recorded expression of the doctrine of popular sovereignty among the Romans. In this period, however, the people were never called upon to ratify the acceptance of a submission or of an alliance on unequal terms. Such agreements granting Rome the superior right were negotiated, as in earlier time, by the magistrate or senate or by both in conjunction.[4] The details, too, of every treaty were still left to the magistrates and senate, so that to the end of the republic the senatus consultum continued to be indispensable.[5] But from the time of the Caudine misfortune, and in consequence of it, the principle was established that a treaty involving a concession of even equal rights on the part of Rome required the sanction of a popular vote. Recorded instances of such ratification for this period (321–287) are rare.[6] The function fell to the comitia tributa under patrician or plebeian presidency, which in its exercise showed more independence[7] than did the comitia centuriata in the declaration of wars. In this way the tribal assembly took its place by the side of the centuriate in international affairs.[8]

[1] IX. 9. 4. Gellius, xvii. 21. 36, less credibly states that the treaty was repudiated by order of the people.

[2] Livy ix. 5–11; Cic. *Off.* iii. 30. 109; *Inv.* ii. 30. 92; Zon. vii. 26. 15.

[3] Livy ix. 9. 4.

[4] Livy viii. 36. 11 f. (ambassadors of the Samnites, applying for peace to the dictator, are ordered by him to address the senate, which replies that it will accept the arrangements of the magistrate, 324); ix. 20. 8 (an unequal alliance with Apulia negotiated by the consul, 317); ix. 43. 6 f. (the Hernicans, beaten in war, apply to the senate, and are referred to the consuls, who accept their submission, 307); ix. 45. 1–3 (Samnite ambassadors ask peace of the senate, which replies that the consul will pass through their country and will report to the senate on the conditions which he finds there, 304); x. 3. 5 (the dictator, fining the Marsians of a part of their territory, grants them a renewal of the treaty, 302). In none of these instances is mention made of the people; and most of them preclude a popular vote.

[5] Sall. *Iug.* 39.

[6] Cf. Livy ix. 20. 2 f. (318), in which a proposal of peace was rejected by the people. In the treaty with the Lucanians, 298, Livy, x. 11. 13; 12. 1, mentions the senate only; Dionysius, xvii, xviii (xvi. 12). 1. 3, speaks of both senate and assembly.

[7] Cf. Livy ix. 20. 2 f.

[8] Polyb. vi. 14. 10 f.; 15. 9.

The absolute power to bestow the citizenship exercised by the kings[1] would naturally pass undiminished to the consuls, and thence to the censors on the institution of the latter. It is in fact the opinion of Lange[2] that these magistrates respectively exercised full rights in the matter, and that they consulted the senate in important cases only. At all events the question is simply as to the relative participation of the magistrates and the senate in the function. The final settlement of Latium after the war, involving the bestowal of citizenship, 338, the senate seems to have attended to alone through a consultum, no mention being made of the people.[3] In the whole course of Roman history to 332 there is no record of a grant of citizenship by popular vote.[4] As the Acerrani were left out of account by the senatus consultum above mentioned, L. Papirius in 332 through the first recorded pretorian law granted them the civitas sine suffragio.[5] In opinion of Lange,[6] based upon a statement of Velleius,[7] the censors of the year, Q. Publilius Philo and Sp. Postumius, while enrolling the new citizens, probably obtained a senatus consultum requesting the praetor to bring this subject before the tribes. That a senatorial decree was essential is proved by the case of the Privernates mentioned below. We may well believe that the great plebeian statesman Publilius gladly embraced the opportunity to make the tribal assembly a partner in the important function of imparting the rights of the city. Three years afterward an order of the people, doubtless of

[1] P. 181. [2] *Röm. Alt.* i. 514; ii. 638; p. 283 above.

[3] Livy viii. 13. 10 ff.; ch. 14.

[4] The gift of citizenship, adprobantibus cunctis, to L. Mamilius, dictator of Tusculum, 458, does not necessarily imply a public vote; Livy iii. 29. 6. Even if this were the opinion of Livy, it need be no more than an anticipation of later usage. In 381 the Tusculans received the citizenship, how we are not informed; Livy vi. 26. 8: Dio Cass. Frag. 28. 2. In the account of the settlement of Latium and Campania in 340, involving the grant of citizenship to the Capuan equites, no mention is made of either senate or people; Livy viii. 11. 13–16. The sources are likewise silent as to a popular vote in the grant of citizenship sine suffragio to the Caerites; Livy vii. 20. 8; Dio Cass. Frag. 33 (Boissevain i. p. 138); Strabo v. 2. 3, p. 220; Gell. xvi. 13. 7. From Livy and Dio Cassius it may be reasonably inferred that the event took place after 353, though Boissevain's date, 273, seems to be too late. Probably they were admitted between 353 and 332 — before the hundred years' peace had far advanced.

[5] Livy viii. 17. 12. [6] *Röm. Alt.* ii. 638. [7] I. 14. 4.

the tribes, ex auctoritate patrum, granted the citizenship to the Privernates, 329.[1] By what authority the Hernicans received the civitas sine suffragio in 306 is not stated.[2] Long after the Hortensian legislation the principle was established that the people alone without the authorization of the senate had a right to bestow the ius suffragii on whomsoever they pleased.[3] Logically the function should have fallen to the comitia centuriata as the source of censorial power; but the tribal assembly assumed it because of its connection with the making of treaties.[4]

It was the province of the centuriate assembly to introduce permanent regulations of existing magistracies and to institute new ones;[5] but the function was now transferred, silently so far as we know, to the tribes. Far-reaching in its effect was the creation of the promagistracy in 327. No prolongation of an official power is known to have occurred before this date. The extension of the territory of Rome and of her military operations was now calling for greater elasticity in the duration of commands; but in the face of a strong movement toward popular rights the senate dared not assume the responsibility of so sweeping an innovation. It placed in the hands of the tribunes, accordingly, the business of bringing before the people a rogation for prolonging the imperium of the consul Q. Publilius Philo to the end of the war with Naples, instituting by this precedent the promagistracy.[6] Again in 295 the imperium of the consul Volumnius was prolonged for a year by a decree of the senate ratified by a plebiscite.[7] After the custom had been established, however, the senate ordinarily attended to the prolonging of the imperium, as in 308,[8] in 296,[9] and in 294,[10] consulting the people, as it seems, only in cases of tribunician opposition.[11] No instance of popular interference in the assignment of provinces is mentioned before 295, when a resolution of the comitia tributa, under

[1] Livy viii. 21. 10. Nothing is said as to the chairmanship of the assembly. The event is referred to by Dio Cass. Frag. 35. 11.

[2] Livy ix. 43. 24. [3] P. 352. [4] Lange, *Röm. Alt.* ii. 610 f., 638.

[5] P. 234. The only exception is the creation of a prefecture of the market by a plebiscite in 440; p. 295.

[6] Livy viii. 23. 11 f.

[7] Livy x. 22. 9.

[8] Livy ix. 42. 2.

[9] Livy x. 16. 1.

[10] Dion. Hal. xvii, xviii (xvi. 16). 4. 4.

[11] Lange, *Röm. Alt.* ii. 640.

what form of presidency is not stated, granted Etruria to the patrician Fabius in preference to the plebeian Decius.[1] This act was an inroad upon the right of the magistrates to divide the business of their office among themselves by agreement or lot. In 292 another resolution of the people recalled from the field the consul Q. Fabius Gurges because of ill-success in war with the Samnites. The senate was the prime mover in the matter, but the form of assembly is unknown. The question concerned either the abrogation of his magistracy or more probably his transfer to some other activity.[2] Even in the latter case the act of the people was a remarkable deviation from their usual modest policy of dealing with officials.

In 318 a law, doubtless tribal, was passed for sending praefecti iure dicundo to Capua;[3] and similar laws were from time to time enacted for assigning the same kind of officials to other communities of Italy.[4] These prefects continued to be appointed by the urban praetor till after 124.[5] Whether the law of 318 was pretorian or tribunician cannot be determined.[6] Similar in character was the Atilian-Marcian plebiscite for the election of sixteen military tribunes instead of six, 311.[7] The substitution of election for appointment was in effect the institution of a magistracy — in this case merely an increase in number within a magisterial college which had existed since 362. In the act of 311 the tribes usurped a function which had hitherto belonged to the centuries.[8] Although the elective military tribunes remained subordinate to the consuls, the change increased their dignity and in some degree their independence, while it tended to impair the efficiency of the service. Naturally the office became a stepping-stone to political honors. The Decian plebiscite of the same year instituted the duumviri navales charged with the function of repairing, equipping, and commanding the

[1] Livy x. 24. 18; cf. Willems, *Sén. Rom.* ii. 531. For other versions of the event, see Livy x. 26. 5 f.

[2] Livy, ep. xi; p. 359 above. Probability favors the tribunician assembly.

[3] Livy ix. 20. 5. [4] Fest. 233. 14.

[5] Mommsen, *Röm. Staatsr.* ii. 609.

[6] Lange, *Röm. Alt.* ii. 73, 632. Cuq, in Daremberg et Saglio, *Dict.* iii. 1144, assumes that it was proposed by L. Furius, praetor in that year.

[7] Livy ix. 30. 3. [8] P. 234.

fleet.[1] The two plebiscites of this year have the appearance of a compromise between continental and commercial interests under the influence of Appius Claudius Caecus the censor. Closely related is the article of the Ogulnian plebiscite, 300, which provided for an increase in the number of augurs and pontiffs.[2] Here, too, belongs the plebiscite of 296 for the appointment of commissioners for conducting colonies.[3] Henceforth it was the custom of the senate to refer to the people the creation of all extraordinary offices, and their election to the comitia tributa usually under pretorian presidency.[4]

The people made a furthur advance when they undertook to regulate by law the composition of the senate itself. To the period between the Publilian legislation of 339 and the censorship of Appius Claudius Caecus, 312, belongs the famous Ovinian plebiscite concerning the revision of the senate list.[5] It transferred the function from the consuls to the censors, and required the latter under oath (iurati; MS. curiati) to enroll all who were worthy among the retired magistrates of every rank, from the curule functionaries down through those of plebeian standing to the quaestors.[6]

The Valerian-Horatian and Publilian statutes are evidence of the right of the people to legislate regarding the composition and powers of their assemblies. No longer content, however, with the making and repeal of laws, — a right guaranteed by the Twelve Tables,[7] — they began the practice of occasionally suspending laws to the advantage or disadvantage of individuals or of classes — in other words, the voting of privilegia.[8] There were repeated violations of that article of the Genucian plebiscite which forbade reëlection to an office within a period of ten

[1] Livy ix. 30. 3 f. In ix. 38. 2 he refers to a naval commander whom the senate placed in charge of the coast, and whom Mommsen, *Röm. Staatsr.* ii. 580, n. 1, supposes to have been a duovir. That a duovir commanded a fleet in 282 is proved by Livy, ep. xii; Dio Cass. Frag. 39. 4. Probably the triumviri capitales, 289, were created by a similar act of the tribes; Livy, ep. xi; p. 312.

[2] P. 309.

[3] P. 311.

[4] Lange, *Röm. Alt.* ii. 534, 636.

[5] Fest. 246. 19.

[6] The brief statement of Festus, ibid., is here interpreted in the light of Livy xxiii. 23. 6. In general on the Ovinian plebiscite, see Lange, *Kleine Schriften*, ii. 393–446; Willems, *Sén. Rom.* i. 153–173, 668–89; Herzog, *Röm. Staatsverf.* i. 259 ff.; Mommsen, *Röm. Staatsr.* ii. 418; iii. 873, 879.

[7] Cf. Livy iv. 5. 2; p. 287 above.

[8] Cf. Gell. x. 20. 4, 9 f.

years,[1] and no mention is made of the necessity of a dispensation before the year 298, when Q. Fabius Maximus is alleged to have objected to further reëlection on the ground that such conduct was forbidden by law. Thereupon the tribunes of the plebs declared that to remove the obstacle they would propose to the people that he should be absolved from the legal requirement.[2] But in fact, as Lange[3] has noticed, Fabius had not been consul for ten years and was therefore legally eligible. Lange suggests that this story of the dispensation may belong to his next election in 295.[4] At all events the custom of granting dispensations began about this time,[5] although we need not suppose that the patricians attached much importance to the Genucian statute, which was adopted by an exclusively plebeian assembly. This function assumed by the people of freeing from the power of the law, often exercised in historical time by the senate as well, marks a great advance toward popular sovereignty. The idea that the law was sovereign, which had arisen in the early republic, was now yielding to the idea that it was subject to the caprice of every popular gathering.[6] The aristocracy was giving way to a democracy, which under the conditions destined to prevail at Rome could only mean mob-rule.

The right of the people in their tribal assemblies to legislate concerning religion had already been established by the precedent of the Licinian-Sextian plebiscite on the decemviri sacris faciundis[7] and of other less important acts.[8] Immediately after the Publilian legislation the comitia of tribes became more active in this field. To the period of the great Latin war according to Cicero,[9] hence necessarily to 338,[10] belongs the consular lex Maenia, which added to the Ludi Romani the day called instauraticius,[11] although less trustworthy accounts assign the

[1] Cf. Livy viii. 16. 4; ix. 7. 15; 28. 2; Diod. xix. 66. 1; p. 299, n. 3.
[2] Livy x. 13. 8 f. [3] *Röm. Alt.* ii. 641. [4] Livy x. 22. 9.
[5] It is the only instance mentioned for this early time.
[6] Livy x. 13. 10: "Iam regi leges, non regere"; cf. Appian, *Lib.* 112; Lange, *Röm. Alt.* ii. 641. [7] P. 295 f. [8] P. 293, 295, n. 6.
[9] *Div.* i. 26. 55; Macrob. *Sat.* i. 11. 13 (on the reading, see Mommsen, in *Hermes* iv (1870). 7; Lange, *Röm. Alt.* ii. 634. [10] Livy viii. 13. 1.
[11] Macrob. *Sat.* i. 11. 5; Cuq, in Daremberg et Saglio, *Dict.* iii. 11. 54. On these games, see Marquardt, *Röm. Staatsv.* iii. 497; Wissowa, *Relig. u. Kult. d. Röm.* 111 f., 385 f.

establishment of this day to 491.[1] The law initiated by the senate in 304 forbidding the dedication of a temple or altar except by permission of the senate or of a majority of the college of tribunes[2] was probably passed by the comitia tributa plebis. In the opinion of Lange[3] it was either identical with, or afterward supplemented by, the lex Papiria tribunicia, which forbade the consecration of a temple, precinct, or altar without an order of the plebs.[4] The latter is the more probable; it seems reasonable that, as Lange suggests, the right of the people in this matter developed from the necessity of referring to them cases in which the senate and the tribunes could not agree. Technically religious, though of vast political consequence, was the Ogulnian plebiscite of 300, which increased the number of augurs and pontiffs to nine each, and provided that four augurs and five pontiffs should be plebeian.[5] It was the last step in the opening of offices to the plebs.

In their effort to gain control of the more important judicial business the people made slower progress. In all probability it was not till after the Publilian legislation that the centuriate and tribal assemblies began regularly to exercise the function of appellate courts — a right established long before by legislation[6] and confirmed for the centuries by the Valerian law of appeal in 300.[7] The creation of special judicial commissions — quaestiones extraordinariae — belonged originally to the senate; and the establishment of such a court de caede through a plebiscite in 414, if historical, was merely the execution of a senatus consultum.[8] The task of trying and condemning the matrons for poisoning in 331 must have fallen to such a quaestio extraordinaria not expressly mentioned. Whether it was instituted by the senate or the tribes cannot be known.[9] The special quaes-

[1] Livy ii. 36; Dion. Hal. vii. 68; Plut. *Cor.* 24; Val. Max. i. 7. 4; cf. Lange, *Röm. Alt.* ii. 634. [2] Livy ix. 46. 7. [3] *Röm. Alt.* i. 828; ii. 634.

[4] Cic. *Dom.* 49. 127 f.; *Att.* iv. 2. 3.

[5] Livy x. 6 f. He has evidently made a mistake in supposing the number of pontiffs to have been increased to only eight (chs. 6. 6; 8. 3; 9. 2; cf. Bardt, *Priester der vier grossen Collegien*, 32 f.; Wissowa, *Relig. u. Kult. d. Röm.* 432, n. 4.

[6] P. 240, 241, 269, 280. [7] P. 241 f. [8] P. 295.

[9] Livy viii. 18. 3 ff.; Val. Max. ii. 5. 3; Oros. iii. 10; August. *Civ. Dei*, iii. 17. p. 124 Domb. The lex de veneficio mentioned by Livy, ep. viii, may refer to the act which established this court; but it would not be legitimate to argue from this

tio, too, concerning conspiracy, at first under dictatorial and afterward under consular presidency, seems to have been instituted solely by a senatus consultum.[1] The Flavian rogation of 323 for punishing the Tusculans for having given aid and encouragement to the enemies of Rome[2] may have aimed to create a special court for the purpose, or it may have been an attempt to dispense justice by means of legislation.[3] However that may be, it was rejected by all the tribes but one. The Satricans, who revolted to the Samnites after the Caudine disaster and were conquered in 319, were punished by the senate acting as a special court on the authority of the Antistian plebiscite.[4]

The right of the people both in the centuries and in the tribes to legislate on finance had before 339 been well established by precedent. Economic as well as social in character was the lex Poetelia, which prohibited loans on the security of the person,[5] and which was proposed to the tribes, or possibly to the centuries, by C. Poetelius Libo as consul in 326 or as dictator in 313.[6] It abolished contractual but not judicial servitude, though it probably mitigated the latter.[7] Politically more significant than this individual act was the long-continued popular effort to gain control of the disposal of the public land. It was to the detriment of the senatorial prerogative that the tribunes of the plebs took up the agrarian question from the time of Sp. Cassius,[8] and continued almost unceasingly to agitate for the limitation of the use of public land by the rich and the division of the surplus among the poor, till they succeeded in embodying their ideas in the Licinian-Sextian law on these subjects. Equally to the province of the senate belonged the planting of colonies[9] both from the

expression a popular vote. The epitomator undoubtedly drew all his information from the text.

[1] Livy ix. 26. 6 ff.; cf. however, Lange, *Röm. Alt.* ii. 637.

[2] Livy viii. 37. 8; Val. Max. ix. 10. 1; Pliny, *N. H.* vii. 42. 43. 136; p. 288, n. 1.

[3] Lange, *Röm. Alt.* ii. 637.

[4] Livy ix. 16. 10; xxvi. 33. 10.

[5] Cic. *Rep.* ii. 34. 59; Livy viii. 28; Varro, *L. L.* vii. 105; Dion. Hal. xvi. 5 (9); Suidas, s. v. Γάιος Λαιτώριος; cf. Kleineidam, *in Festg. f. F. Dahn*, ii. 1–30.

[6] Varro, ibid., assigns the law to a dictator, C. Popillius, which may be a mistake for C. Poetelius, dictator in 313; Livy ix. 28. 2.

[7] Greenidge, *Leg. Proced.* 74.

[8] P. 238.

[9] P. 284

military and from the financial point of view. Here, too, the tribunes in the economic interest of their constituents began early to agitate for a share in the administration.[1] It was not till 296 that they met with any success in this direction, and then at the will of the senate, which charged the tribunes with the business of introducing a plebiscite for ordering the praetor to appoint triumviri for conducting colonies to certain specified places.[2] This was the modest outcome of centuries of agrarian and colonial agitation on the part of the tribunes.

The fact is that after the enactment of the Genucian and Publilian laws the plebeians continued for about a generation relatively content with their economic condition. Frequent victories brought booty,[3] and conquests made extensive assignments of land possible.[4] But the people must have found the third Samnite war oppressive. Although of far shorter duration than the second, it required larger armies and longer and more distant campaigns. Under the burden of military service the plebs again fell into debt, in spite of the unusual distributions of booty among the soldiers when victorious.[5] Their burden was rendered the heavier by the circumstance that many of the wealthy were violating the Licinian-Sextian restrictions on the use of public land and pasture, and were doubtless failing to pay their dues[6] — a course of conduct which rendered necessary not only the assignment of the spoil of 293 to the aerarium but also the imposition of a tributum especially vexatious to the plebs.[7] The distress was augmented by a pestilence which began in 295 and continued for several years.[8]

[1] Livy, iv. 11. 3–7, represents the tribunes of 442 as attempting to call to account the colonial commissioners of that year (cf. p. 288). In 418 they planned to offer a bill for colonizing Labici (Livy iv. 47. 6). In 415 a bill for colonizing Bolae, introduced by a tribune of the plebs, was vetoed by a colleague; Livy iv. 49. 6; cf. Diod. xiii. 42. 6. Many similar instances are given for the time immediately following; cf. Lange, *Röm. Alt.* ii. 626 f. with citations. Although we may question the truth of these individual cases, we have no ground for doubting that such agitation continued long before the tribunes succeeded in carrying a colonial law.

[2] Livy x. 21. 9; p. 307.

[3] Livy viii. 36. 9 f.; ix. 42. 5.

[4] Cf. Livy x. 6. 3; 21. 9; Herzog, *Röm. Staatsverf.* i. 282 f.

[5] Cf. Livy x. 17. 10; 20. 16; 25. 3; 30. 10: "Praemia illa tempestate militiae haudquaquam spernenda"; 31. 4; 44. 1; 45. 14; 46. 15.

[6] Livy x. 13. 14; 23. 13; 47. 4.

[7] Livy x. 46. 5 f.

[8] Livy x. 31. 8; 47. 6; ep. xi; Zon. viii. 1. 10; Val. Max. i. 8. 2.

Whereas all on actual service were by law exempt from prosecution for debt, many citizens who remained at home were the victims of the usurers, who were occasionally fined for their illegal exactions.[1] Again all the commons incurred hopeless debts, which at the close of the war (290) the creditors must have proceeded to exact with their usual ruthlessness. The institution of the tresviri capitales in the following year[2] is proof of the intention of the government to enforce the criminal law with the utmost rigor. A new movement for the relief of debtors had already set in, and the creditors were organizing resistance to the popular demands. As long as the nobility could rely upon the tribunate of the plebs,[3] they felt secure. Even if a bill for the benefit of the poor should be presented, they believed their interests to be well fortified by tribunician intercession and by the senate, which, composed chiefly of creditors, would certainly refuse its sanction to such a measure. The grave economic distress, however, at length filled the tribunate with men who were at one in demanding a radical measure of relief, and who accordingly presented a bill for the abolition of debts. Many times they offered it to the tribes in vain; the senate refused its assent; for the creditors, among whom must be counted a majority of the senators, hoped to recover both principal and interest. Willing to compromise, the tribunes then offered the senate, if it should yield, a choice of two alternatives, neither of which can be deduced with certainty from the mutilated fragment of Dio Cassius, our authority for this event. One of them, however, is conjectured to be that the principal alone should be recovered,[4] in what way cannot be made out; and the other that the interest already paid should be deducted from the principal, and the balance rendered in three equal annual instalments — a repetition of the Licinian-Sextian provision regarding debts. At first the debtors were willing to grant this concession through fear of failing to obtain any degree of relief; but the creditors, now hoping to recover everything, refused to be conciliated. After a time both parties shifted their attitude; the creditors expressed

[1] Livy x. 23. 11 f.
[2] P. 307, n. 1, 332.
[3] P. 279.
[4] Boissevain's reading.

themselves as satisfied to recover the principal merely, while the debtors would no longer accept either alternative of the compromise. The sedition, for such the conflict became, continued interminably; and although the creditors yielded, little by little, far more than they had intended in the beginning, the debtors made each concession the basis of a new demand. They brought the long, serious struggle to a climax by seceding to the Janiculum, at the very time when the Tarentines were completing the organization of a coalition of Etruscans, Gauls, Samnites, and several other peoples against Rome.[1] Q. Hortensius, appointed dictator to meet this crisis, carried through the comitia centuriata a group of provisions for satisfying the demands of the seceders:

(1) Doubtless a clause for the relief of debtors, of which no mention is made in our scant sources.

(2) A provision that without the consent either of the senate or of the patrician portion of it a resolution of the plebs should be valid for all the citizens.[2]

At the time when the Valerian-Horatian statute provided that with the consent of the senate resolutions of the tribunician comitia tributa should have the force of law, the senate was still composed exclusively of patricians; and the phrase senatus consultum in this law was therefore considered a full equiva-

[1] The chief source is a mutilated fragment of Dio Cassius viii. 37. 2–4, which is paraphrased in the text above. The account given by Zonaras viii. 2 is a brief epitome of the fragment, adding the circumstance of the foreign war. The restoration of the fragment is due chiefly to Niebuhr, *Rhein. Mus.* ii (1828). 588 ff. See also the edition of Dio Cassius by Boissevain, i. 110 f. and by Melber, i. 108 f. The secession to the Janiculum is mentioned by Livy, ep. xi, and by Pliny, *N. H.* xvi. 10. 37.

[2] Pliny, *N. H.* xvi. 10. 37: "Q. Hortensius dictator, cum plebes secessisset in Ianiculum, legem in aesculeto tulit, ut quod ea iussisset omnes quirites teneret"; Gaius i. 3: "Unde olim patricii dicebant plebiscitis se non teneri, quia sine auctoritate eorum facta essent; sed postea lex Hortensia lata est, qua cautum est ut plebiscita universum populum tenerent; itaque eo modo legibus exaequata sunt"; Laelius, in Gell. xv. 27. 4: "Ita ne leges quidem proprie, sed plebisscita appellantur, quae tribunis plebis ferentibus accepta sunt, quibus rogationibus ante patricii non tenebantur, donec Q. Hortensius dictator legem tulit, ut eo iure, quod plebs statuisset, omnes quirites tenerentur"; Pomponius, in *Dig.* i. 2. 2. 8: "Quia multae discordiae nascebantur de his plebis scitis, pro legibus placuit et ea observari lege Hortensia: et ita factum est, ut inter plebis scita et legem species constituendi interesset, potestas eadem esset."

lent of the patrum auctoritas, the only difference being that the consultum was given in advance of a popular vote and the auctoritas subsequently to it. But when with the appearance of plebeians in the senate the two acts began to drift more widely apart, the patricians successfully claimed an exclusive right to the auctoritas, which, as we have seen,[1] was reduced to a formality, so far as centuriate legislation was concerned, by an article of the Publilian law. So long as the patricians voted in the tribunician comitia tributa, however, and constituted a majority in the senate, they were willing to abide by the specific declaration of the Valerian-Horatian statute which conditioned the validity of the plebiscite on the senatus consultum. But from 339 they were legally excluded from the tribunician comitia tributa, and they foresaw, moreover, the end of their majority in the senate. In the period between 339 and 287, accordingly, they set up a new claim, based doubtless on the practical intention of the Valerian-Horatian law, to be free from plebi scita because the latter were passed without their auctoritas.[2] If they could make good their intention, they would remain unaffected by tribunician laws for the abolition of debt. But the Hortensian statute settled finally the controversy to their disadvantage. That it also rendered the consultum unessential to the validity of the plebiscite is proved not only by later usage but also by the statement of our sources that resolutions of the plebs were placed by the Hortensian act on an equal footing with laws.

(3) Now that the tribunes were given equal freedom with the patrician higher magistrates in initiating legislation, it was of advantage to the nobility to bring the former into the closest possible touch with the senate. Probably therefore the right of the tribunes not only to sit in the senate, but also in the interest of their business to summon that body and to preside over its sessions when so convoked, was due to a provision of the Hortensian law.[3]

[1] P. 235, 372.

[2] This fact is clearly expressed by Gaius; see p. 313, n. 2 above.

[3] Before acquiring this right they had been accustomed to sit on their bench at the door of the curia, in order to watch the proceedings within. Though as yet without an unrestricted legal right of intercession, they had attempted to force their

(4) A correlate of the full power to initiate legislation was the right to veto acts of the government, probably acquired by the Hortensian statute.

(5) But the veto depended upon the power to prosecute.[1] The unlimited veto implied a right to bring finable or capital actions independently of the will of the patrician magistrates. Either by a provision of the Hortensian statute or as a direct consequence of it, the tribunes acquired an unconditioned right to prosecute, being now competent in capital cases to compel the praetor to grant the auspices for holding the comitia centuriata. With the establishment of their absolute power of intercession and jurisdiction they ceased to resort to sedition.

(6) Another article provided that the market-days should be fasti, allowing judicial business to be done thereon, but forbade the meeting of voting assemblies on such days.[2] The peasants who came into the city to use the markets were thus afforded an opportunity to have their law suits settled without being engrossed by the duty of voting, though the magistrates were at liberty to invite them to informal contiones.[3] This Hortensian provision was conservative in so far as it placed the tribunician assembly under the same pontifical regulations of the calendar as those which were to control the other forms of comitia.[4]

The right of the people to elect their magistrates, with the exception of the dictator and the master of horse, existed from the beginning of the republic. Their right also to create new offices began with the institution of the consulship, and was

veto upon the senate; Val. Max. ii. 2. 7; Zon. vii. 15. 8; cf. Mommsen, *Röm. Staatsr.* ii. 316 f. The wording of the law of 304 regarding the dedication of a temple or altar indicates that the tribunes had not yet acquired the right to convoke the senate and bring measures formally before it; Mommsen, ibid. p. x, n. 2.

[1] P. 270.

[2] Granius Licinianus, in Macrob. *Sat.* i. 16. 30: "Lege Hortensia effectum, ut fastae essent (nundinae), uti rustici, qui nundiniandi causa in urbem veniebant, lites componerent. Nefasto enim die praetori fari non licebat"; § 29: "Iulius Caesar sexto decimo auspiciorum libro negat nundinis contionem advocari posse, id est cum populo agi: ideoque nundinis Romanorum haberi comitia non posse"; cf. p. 471 below.

[3] P. 139.

[4] P. 471 below; cf. Lange, *Röm. Alt.* ii. 644; Herzog, *Röm. Staatsverf.* i. 287 f.; Mommsen, *Röm. Staatsr.* iii. 372 f.

frequently exercised during the period treated in this chapter. In the age which begins with the Valerian-Horatian legislation we find the people regulating by law the qualifications and conduct of candidates as well as the powers and functions of the magistrates themselves. They had the same right to deal with the organization and competence of the assemblies. From 358 to 287 they rapidly extended their legislative power, by precedent rather than by statute, over the whole field of the constitution and over the administration in all its departments; they ventured even to regulate the senate and to interfere with the imperium. Controlled originally by the senate, in the end they won their freedom from that body, whereas the initiative in every act always remained with the presiding magistrate. Meantime they had acquired supreme judicial power. In constitutional theory they were at last sovereign. The senate and the magistrates, so this theory asserted, still retained large administrative powers for the sole reason that the assemblies, unable to manage the current details of public business, were content with occasional participation and regulation. Most of these gains had been made by the tribes under the presidency of tribunes or of patrician magistrates, usually praetors. In legislation the comitia tributa had rendered the centuriate assembly dispensable excepting in declarations of offensive war and in the confirmation of censorial elections. The question whether the people in their centuries and tribes were to realize their sovereignty in actual public life was left to the following period.

The literature on this subject is included in the bibliography for the preceding chapter.

CHAPTER XIV

THE JUDICIAL FUNCTIONS OF THE COMITIA TRIBUTA

From 287 to the End of the Republic

I. *Tribunician Jurisdiction*

Whereas the sources assume that the tribunes of the plebs as early at least as the decemviral legislation had cognizance of both finable and capital cases,[1] an examination of the recorded trials leads to the conclusion that they made little use of this power till the period between the legislation of Publilius Philo (339) and that of Hortensius (287).[2] Whether their activity after 339 was due to the Publilian enactment of that year[3] or merely to the gradual evolution of popular rights cannot be determined. However that may be, it was not till after the Hortensian legislation that we find the tribunician jurisdiction at its highest point of development and free from every restriction.[4]

The capital actions brought by the tribunes before the centuries in the period from Hortensius to the end of the republic have already been reviewed.[5] We have now to consider the finable cases brought before the comitia tributa in the same period. It is characteristic of the era immediately following the Hortensian legislation, 287–232, described in the following chapter as politically stagnant,[6] that only one tribunician prosecution is mentioned, and that against the consuls of 249 for contempt of the auspices. Appius Claudius Pulcher, one of the consuls, was fined a hundred and twenty thousand asses, after the action had been transferred from the centuries to the tribes in the way described in an earlier chapter.[7]

In accord with the spirit of the Flaminian era, 232–201, on the other hand, is the prosecution of the retired consuls, M.

[1] P. 243, 287 f. [2] P. 247, 289. [3] P. 309.
[4] P. 290. [5] P. 248 ff. [6] P. 330 ff.
[7] P. 248.

Livius Salinator and L. Aemilius Paulus, on the ground that they had unjustly distributed the booty gained in war. Technically the charge seems to have been peculatus;[1] it was brought before the tribes in 218, doubtless by tribunes of the plebs. Aemilius narrowly escaped condemnation; Livius was fined. The popular feeling against them was extremely bitter.[2] In 214 M. Atilius Regulus and P. Furius Philus, censors, degraded to the condition of aerarius[3] L. Caecilius Metellus,[4] who after the battle of Cannae had tried to persuade the knights to abandon Italy.[5] He was elected tribune of the plebs for the following year, and made use of his office in an attempt to prosecute the censors before the close of their administration. His purpose was thwarted, however, by the intercession of the remaining nine tribunes,[6] who in this way saved for a time a conservative principle of the constitution — the inviolability of the magistrate from prosecutions while in office.[7] The trial of Postumius the publican, beginning in a finable action and ending as perduellio, has been treated elsewhere.[8] In the same period falls the trial of the tresviri nocturni for appearing too late at a fire. They were accused by the tribunes and condemned by a vote of the tribes.[9]

[1] (Aurel. Vict.) *Vir. Ill.* 50. 1.

[2] Livy xxii. 35. 3; 40. 3; 49. 11; xxvii. 34. 3 f.; xxix. 37. 13 f.

[3] P. 62. [4] Livy xxiv. 18. 3, 6. [5] Livy xxii. 53. 4 f.

[6] Livy xxiv. 43. 1–3; cf. Klebs, in Pauly-Wissowa, *Real-Encycl.* ii. 2093.

[7] A similar attempt in 204 by Cn. Baebius, tribune of the plebs, to prosecute the censors C. Claudius and M. Livius while in office was quashed by the senate; Livy xxix. 37; Val. Max. vii. 2. 6; cf. Mommsen, *Röm. Staatsr.* ii. 322, n. 4.

[8] P. 249. The state agreed to insure from the enemy and from storms cargoes shipped for the use of the army; Livy xxiii. 49. 1–3; xxv. 3. 10. Postumius took advantage of this insurance to send out old, unseaworthy ships with cargoes of little value, and after wrecking them, to report many times the real amount of the loss; ibid. § 10 f. The senate, fearing to give offence to the powerful order of publicans, failed to act when informed by the praetor; § 12. Thereupon the tribunes brought the accusation. For the trial, see ibid. § 13–9 and ch. 4; cf. Lange, *Röm. Alt.* ii. 177, 588. The weight of the *as* in which the fine was estimated is not given by Livy xxv. 3. 13.

For a similar transfer of the case against Cn. Fulvius, retired praetor, from the tribes to the centuries, 211, see p. 249.

[9] Val. Max. viii. 1. damn. 5. Here, too, should be mentioned the condemnation of a member of the same board in a similar action for neglect to inspect the watchmen; Val. Max. ibid. § 6.

The era of the full-grown plutocracy, 201–134, is characterized by the great number of prosecutions of eminent persons for political objects. M. Porcius Cato was several times brought to trial for the conduct of his consulship, 195, with the result that the speeches delivered in his own defence filled a volume.[1] In 189 M'. Acilius Glabrio, then candidate for the censorship, was accused of peculatus of booty by two tribunes in a finable action of a hundred thousand asses. The crime was alleged to have been committed in the preceding year, when as proconsul the accused gained over the Aetolians and Antiochus a victory by which he won the right to a triumph.[2] Cato, formerly his military tribune and now a competitor for the censorship, appearing as a witness, delivered at least four speeches against him. These proceedings forced Acilius to drop the candidacy, whereupon the accusation was withdrawn.[3] The attack upon this man is to be regarded as a manoeuvre of Cato and his supporters against his political adversaries, the Scipios, who numbered the accused among their friends. In 185 Cato was ready for a direct assault. In that year two of his supporters, both named Q. Petillius, tribunes of the plebs, made in the senate at his instance a demand that L. Scipio Asiagenus[4] should render an account of the three thousand talents paid him as war indemnity by Antiochus among the conditions of peace. His brother Publius, knowing well that the blow was in reality aimed at himself, resolved to measure his full strength with that of his adversaries. When accordingly the record of the transaction was produced, Publius, complaining that an account of three thousand talents should be demanded of a man who had brought fifteen thousand into the treasury from booty, tore the document in pieces.[5] In this proceeding he kept strictly within his legal rights.[6] Nothing further seems to have been accomplished for the present;[7]

[1] Cato, *Orat.* i: "Dierum dictarum de consulatu suo."

[2] Livy xxvii. 46. 1 f.

[3] Cato, *Orat.* xiii; Livy xxxviii. 57. 10; cf. Mommsen, *Röm. Forsch.* ii. 459 ff.

[4] For the cognomen, see Münzer, in Pauly-Wissowa, *Real-Encycl.* iv. 1475.

[5] Polyb. xxiii. 14; Gell. iv. 3–5, 7–12; Diod. xxix. 24 (from Polyb.); Livy xxxviii. 54; Val. Max. iii. 7. 1 d; (Aurel. Vict.) *Vir. Ill.* 49. 16–9.

[6] Mommsen, *Röm. Forsch.* ii. 464 f.

[7] In the story of the trial given by Antias the two Petilii were the prosecutors of

but M. Naevius, tribune of the plebs, after entering office December 10, 185, brought against Publius Scipio a prosecution, not for peculatus, but for official misconduct. The specific charge was that in return for the restoration of his son from captivity he, as legatus of his brother, had granted too favorable terms of peace to Antiochus. In the first contio the accused recited his services to the state; in the second, which happened to fall on the anniversary of his victory over Hannibal, he invited the people there assembled to go with him to the Capitoline temple to give thanks to Jupiter, Juno, Minerva, and the gods who kept the place, for having endowed him with the will and the ability to achieve that and other similar deeds in behalf of the commonwealth.[1] Naturally the dissolution of the assembly vexed the tribunes. Before the day came for the third contio he withdrew from Rome. His brother tried to excuse his absence on the plea of sickness, and Ti. Sempronius Gracchus, tribune of the plebs, prevented his colleagues from causing further annoyance to the great man. The general circumstances indicate that the trial was to take place before the tribes, and that the penalty in case of conviction was accordingly to be a fine. His brother was still in danger. Early in 184 C. Minucius Augurinus brought a finable action[2] against Lucius concerning the money received from Antiochus.[3] He was condemned by the tribes, whereupon the prosecutor demanded surety (praedes) for the payment of the fine. But when Scipio failed to comply, the tribune attempted to imprison him. Returning suddenly to Rome, Publius appealed to the tribunes in behalf of his brother. Whereas eight members of the college sustained the

Publius (Livy xxxviii. 50 f.). In ch. 54 f. Livy, again following Antias, represents these tribunes as authors of a plebiscite for the appointment of a special court to inquire concerning the money received from King Antiochus, and states that L. Scipio was condemned by this court. The story may not be without foundation; but if such a plebiscite was adopted, it could not have had the desired result.

[1] This incident is considered doubtful by Bloch, in *Rev. d. étud. anc.* viii (1906). 109.

[2] According to Diod. xxix. 21, Scipio was threatened with the death penalty; but the trial actually took the form described above in the text.

[3] Gell. vi. 19. 2. It was probably in connection with this trial that Cato delivered his speech "Concerning the money of King Antiochus"; Livy xxxviii. 54. 11; Plut. *Cat. Mai.* 15; Cato, *Orat.* xv.

prosecutor, one of them, Ti. Gracchus, prevented the imprisonment and consequently the collection of the fine.[1] But the total result of the proceedings was the overthrow of the Scipios, and the conqueror of Hannibal retired heart-broken to his country estate.[2]

In the same year, 184, M. Porcius Cato, at that time censor, was prosecuted for official misconduct by tribunes in a finable action for two talents, but was in all probability acquitted.[3] In this period the tribes must have been unusually active in a judicial capacity,[4] as Cato was himself prosecuted forty-four times, often doubtless before the comitia tributa, but was always given a favorable verdict.[5]

C. Lucretius, praetor in 171, was accused in the senate by Chalcidian ambassadors of merciless cruelties and robberies perpetrated by him on their community. Thereupon two tribunes of the plebs, M'. Juventius Thalna and Cn. Aufidius, prosecuted him before the people, technically on a charge of furtum and iniuria. He was condemned by all the tribes to a fine of a million asses.[6] But after 149 most cases of misgovernment in the provinces came before the quaestio repetundarum instituted in that year.[7] There were occasional prosecutions for beginning war without authorization.[8] Toward the end of the

[1] The edicts of these conflicting tribunes are given by Gell. vi. 19. 5, 7; cf. Livy xxxviii. 56. 10; Cic. *Prov. Cons.* 8. 18. The dissenting edict states that the fine was imposed nullo exemplo, yet it was within the competence of the tribune; Mommsen, *Röm. Staatsr.* ii. 322, n. 2.

[2] The account here given closely follows Mommsen, *Röm. Forsch.* ii. 417–510. For other authorities on the trial, see p. 329.

[3] Plut. *Cat. Mai.* 19; Lange, *Röm. Alt.* ii. 590; Mommsen, *Röm. Staatsr.* ii. 322, n. 4.

In 142 P. Scipio Aemilianus when censor had deprived Ti. Claudius Asellus of his public horse. Afterward this man as tribune of the plebs brought against him an accusation for malversation in his censorship; Gell. iii. 4. 1; cf. ii. 20. 6. It was a finable case (ibid. vi. 11. 9), in which was charged against him a lustrum malum infelixque; Lucilius, in Gell. iv. 17. 1; cf. Cic. *Orat.* ii. 64. 258; 66. 268. The prosecution probably failed; Lange, *Röm. Alt.* ii. 591; Mommsen, *Röm. Staatsr.* ii. 322, n. 4.

[4] Cf. Plautus, *Capt.* 476.

[5] Pliny, *N. H.* vii. 27. 100; Plut. *Cat. Mai.* 15. Cato's *Oration* liv was delivered on one of these occasions. For his general character and activity, see Livy xxxix. 40.

[6] Livy xliii. 7 f. With this trial was concerned the senatus consultum of 170; cf. Bruns, *Font. iur.* p. 162. See further Lange, *Röm. Alt.* ii. 287, 591; Mommsen, *Röm. Staatsr.* ii. 322, n. 3; cf. i. 699 f.

[7] P. 358.

[8] P. 231 f.

pre-Gracchan oligarchy C. Laelius Sapiens, the friend of Scipio Aemilianus, seems to have been brought to trial for malversation in his consulship of the year 140, but was probably acquitted.[1] A peculiar case, yet characteristic of the time, was that against Cn. Tremellius, praetor in 160, for having "contended injuriously" with the supreme pontiff. It is stated merely that he was fined. If the action came before the people, it must have been brought by a tribune, as the pontiff's jurisdiction was restricted, so far as is known, to the sacerdotes under his supervision. Whatever may have been the procedure, the effect was to place the religious official above the magistrate[2] — a policy which could be expected of the generation that adopted the Aelian and Fufian laws.[3]

Several prosecutions in the era extending from the Gracchi to Sulla partake of the revolutionary nature of the time. The inconsistency in the position of Ti. Gracchus, who depended on the sanctity of the tribunate while technically violating it in the person of his colleague Octavius, is illustrated by his attack on T. Annius Luscus. The latter, a man of consular rank, challenged Tiberius in the senate to answer definitely whether or not he had branded with infamy a brother tribune whom the law declared sacred and inviolable. The senators applauded the challenge; but Tiberius, hurrying from the Curia, convoked the plebs, and ordered Annius to come forward and defend himself against the charge of violating by his words the tribunician sanctity. Before the proceedings could begin, Annius by permission asked his accuser: "If you intend to deprive me of my rank and disgrace me, and I appeal to a colleague of yours, and he comes to my support, and you thereupon lose your temper, will you deprive him of his office?" Plutarch, who tells this story, alleges further that Tiberius, not knowing what to reply, dismissed the assembly and withdrew his accusation.[4] But the fact that Annius made a speech against Tiberius[5] indi-

[1] Fest. 193. 21; 314. 33; cf. Lange, *Röm. Alt.* ii. 591.

[2] Livy, ep. xlvii; cf. Lange, ibid. ii. 313, 591.

[3] P. 359.

[4] Plut. *Ti. Gracch.* 14; cf. Greenidge, *Hist. of Rome*, i. 131 f.; Klebs, in Pauly-Wissowa, *Real-Encycl.* i. 2270.

[5] Fest. 314. 30; cf. Livy, ep. lviii.

cates that the proceedings went farther. Evidently the accused in some way escaped condemnation. The same political significance attaches to the tribunician capital prosecutions of the time, mentioned in an earlier chapter.[1] No more actions, however, are known to have been brought by the tribunes before the tribes till 103,[2] when Cn. Domitius Ahenobarbus, a popular tribune of the plebs, author of the famous statute concerning the election of sacerdotes,[3] prosecuted M. Junius Silanus for misconduct as consul in 109. The charge was that he had begun war on the Cimbri without an order of the people. Notwithstanding the stigma of defeat borne by the accused, he was acquitted by thirty-three of the thirty-five tribes.[4] In the same year Domitius prosecuted M. Aemilius Scaurus for having as consul neglected the sacra of the di Penates at Lavinium. The accused was acquitted by the votes of thirty-two tribes.[5] These prosecutions, together with the plebiscite just mentioned, excited against Domitius an antipathy among the optimates which reveals itself in the sources but which his character hardly deserved.[6]

Another popular tribune, C. Appuleius Decianus, 98, brought against P. Furius the accusation that in the preceding year the latter as tribune of the plebs had betrayed the people's cause. Acquitted of that charge, he was accused later in the year by C. Canuleius, another tribune, on the ground that he had impeded the return of Metellus.[7] In one of the contiones for the trial of this case the citizens would not listen to the

[1] P. 256 f.

[2] Vell. ii. 12. 3 assigns the tribunate of Domitius to 103, Ascon. 80 f. to 104. Probably the latter refers to his entrance upon the office, December 10, 104; but see Bardt, *Priester der vier grossen Collegien*, 7 f.

[3] P. 391.

[4] Ascon. 80; Cic. *Caecil.* 20. 67; *Verr.* ii. 47. 118 (in both Ciceronian passages the motive of the accusation is said to have been personal); cf. Lange, *Röm. Alt.* ii. 592; iii. 70; Mommsen, *Röm. Staatsr.* ii. 320, n. 3.

[5] Ascon. 1; Cic. *Deiot.* 11. 31; Val. Max. vi. 5. 5; Dio Cass. Frag. 92. A personal motive is suggested for this trial also by the sources.

[6] Cf. Münzer, in Pauly-Wissowa, *Real-Encycl.* v. 1324–7.

[7] Dio Cass. Frag. 95. 3; App. *B. C.* i. 33. 148; Schol. Bob. 230; Cic. *Rab. Perd.* 9. 24; *Flacc.* 32. 77; Val. Max. viii. 1. damn. 2; Lange, *Röm. Alt.* ii. 592; iii. 86; Mommsen, *Röm. Staatsr.* ii. 323, n. 1; Mühl, *App. Sat.* 94 ff., 105 f.; Rohden, in Pauly-Wissowa, *Real-Encycl.* ii. 259.

defence of the accused but tore him in pieces. In the same year Appuleius prosecuted L. Valerius Flaccus, curule aedile, on what charge is unknown. His own condemnation to exile, more probably by the centuries than by a quaestio, on the ground that in his accusation of Furius he lamented the death of Appuleius Saturninus, his gentilis, is mentioned in an earlier chapter.[1]

Sulla's completion of the system of standing courts and his restriction of the tribunician function of prosecution[2] substantially withdrew all judicial power from the tribal assembly under the presidency of tribunes. The overthrow of the Cornelian constitutional arrangements left the standing courts with jurisdiction unimpaired. Though constitutionally the tribunes by this overthrow regained their right to prosecute, they exercised it rarely and feebly during the remainder of the republic. C. Memmius, tribune of the plebs in 66, brought M. Terentius Varro Lucullus to trial for what he had done long before in his quaestorship at the dictation of Sulla. As the motive was evidently personal, the accused was acquitted.[3] Early in 58 L. Antistius, tribune of the plebs, in the interest of the optimates threatened to prosecute C. Julius Caesar, who had just retired from his consulship and was on the point of setting out for his provinces. Caesar appealed to the other tribunes, who suspended the prosecution on the ground that the accused was to be necessarily absent in the service of the state.[4] In the year 44 C. Epidius Marullus and L. Caesetius Flavius, tribunes,

[1] P. 257, n. 5 (4). Greenidge, *Leg. Proced.* 352, holds the unusual opinion that he was condemned by a quaestio.

To the time shortly preceding the dictatorship of Sulla belong certain threats of tribunician prosecution which may be mentioned here. In 87 a day was set for the trial of L. Cornelius Sulla himself by the tribune M. Vergilius. The accused, taking no notice of the prosecution, departed for the East; Cic. *Brut.* 48. 179; Plut. *Sull.* 10; cf. Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1537. In the same year Appius Claudius Pulcher, summoned to trial by a tribune of the plebs, retired into exile, whereupon his propretorian imperium was abrogated; Cic. *Dom.* 31. 83; Münzer, in Pauly-Wissowa, *Real-Encycl.* iii. 2489; Greenidge, *Leg. Proced.* 352. In 84 Cn. Papirius Carbo, consul, was threatened with a prosecution, or more strictly with an abrogation of his office, if he should fail to return to Rome to hold the election of a colleague; App. *B. C.* i. 78. 358 f.

[2] P. 414.

[3] Plut. *Lucull.* 37; Lange, *Röm. Alt.* iii. 221; Greenidge, *Leg. Proced.* 353.

[4] Suet. *Caes.* 23; cf. p. 377 below.

instituted proceedings against the man who took the lead in acclaiming Caesar king as he was returning from Alba. The evident displeasure of Caesar at the accusation caused its withdrawal.[1] In incomplete trials, like those last mentioned, it is seldom possible to determine whether they were to come before the centuries or the tribes.[2]

II. *Aedilician Jurisdiction*

Before the Hortensian legislation the curule and plebeian aediles alike had cognizance of usury, stuprum, and violation of the law concerning the limitation of occupation and pasturage of the public lands.[3] In the period now under consideration, beginning in 287, they continued to exercise the same function besides taking upon themselves some new cases. Aedilician actions for violation of the pasturage clause of the Licinian-Sextian statute took place in 240,[4] 196,[5] and 193.[6] Closely related is the fining of usurers in 192,[7] and of grain dealers for cornering the market in 189.[8] In 157 C. Furius Chresimus was prosecuted by a curule aedile for injuring the crops of others by magic, and the case came before the tribes in the Forum. By bringing his farm tools into the assembly and calling them his instruments of magic he induced the citizens to vote his acquittal.[9]

There are several known cases of criminal lust which fell within the aedilician cognizance. In 227 C. Scantinus Capitolinus during his term of office as tribune or aedile of the plebs was prosecuted by M. Claudius Marcellus, curule aedile, on a charge of attempted paederastia. He called attention to the sanctity of his person; but as the tribunes refused to protect him on that ground, he was condemned by the people.[10] Most

[1] Dio Cass. xliv. 10.

[2] Whether the case against Rabirius in 63, begun as perduellio, was transformed into a finable action is uncertain; p. 258. The attack of Clodius on Cicero in 58 took the form, not of a judicial case, but of an interdict through a plebiscite; p. 446.

[3] P. 291.

[4] Fest. 238. 28; Varro, *L. L.* v. 158; Ovid, *Fast.* v. 283 ff.; Tac. *Ann.* ii. 49.

[5] Livy xxxiii. 42. 10.

[6] Livy xxxv. 10. 11.

[7] Livy xxxv. 41. 9.

[8] Livy xxxviii. 35. 5 f.

[9] Piso, in Pliny, *N. H.* xviii. 6. 41; Serv. *in Ecl.* viii. 99; Mommsen, *Röm. Staatsr.* ii. 493, n. 2.

[10] Val. Max. vi. 17; Plut. *Marcell.* 2; Lange, *Röm. Alt.* i. 823; ii. 585.

of the known cases of this general character were against women. Several matrons, accused of stuprum by the plebeian aediles of 213 and fined by the comitia tributa, retired into exile.[1] About the time of the war with Hannibal a charge of incest, based on the fact of intermarriage between close relatives and brought doubtless by an aedile, was judged favorably to the accused by the people.[2] The curule aedile A. Hostilius Mancinus, 183, brought to trial before the tribal assembly Manilia, a courtesan, who, he alleged, had thrown a stone at him in the night and had wounded him. Manilia, appealing to the tribunes, explained that he was attempting violently to break into her house, when she repulsed him with stones. Thereupon the tribunes decreed that the prosecutor deserved the treatment he had received. They interceded against his action, which accordingly had to be dropped.[3]

One case of perduellio under aedilician jurisdiction is recorded. In 246 Claudia, sister of that P. Claudius Pulcher who lost his fleet off Drepanum,[4] was jostled by the crowd as she came from the games. She was heard to say on this occasion that she wondered what would have happened to herself, had her brother not caused the death of so many of the citizens, and to wish that he were again living, to lose another fleet together with the crowd that troubled her. For these words she was brought to trial by the aediles of the plebs, and the people imposed on her a fine of 25,000 heavy asses.[5] The case is described as a iudicium maiestatis apud populum Romanum.[6]

The jurisdiction of the aediles as well as that of the tribunes

[1] Livy xxv. 2. 9; cf. Lange, *Röm. Alt.* ii. 585. The statement of Gellius v. 19. 10, that women had nothing to do with comitia ("Feminis nulla comitiorum communio est"), does not refer to their lack of suffrage, as Lange assumes, for Gellius is explaining why women could not be arrogated. Originally they had no right to be present in contiones or comitia; but in time the principle was modified to a limited extent; p. 147. It was not necessary, however, that the accused should be present in person during the trial; Mommsen, *Röm. Staatsr.* ii. 496.

[2] Plut. *Q. R.* 6; Lange, *Röm. Alt.* i. 126; ii. 585.

[3] Ateius Capito, in Gell. iv. 14.

[4] P. 248, 317.

[5] Ateius Capito, in Gell. x. 6; Livy, ep. xix; Val. Max. viii. 1. damn. 4; Suet. *Tib.* 2; Mommsen, *Röm. Staatsr.* ii. 492, n. 4. This, says Mommsen, is the only aedilician prosecution for a crime committed directly against the state in the period after the decemviral legislation. With this case compare Cicero's threat mentioned in the text below.

[6] Suet. *Tib.* 2.

suffered from the growth of standing courts.[1] The fact that the power remained, provided the holder was in a position to use it, is proved by the occasional recurrence of a prosecution in the lifetime of Cicero. First may be mentioned the proceedings instituted by C. Flavius Fimbria, aedile in 86, against Q. Scaevola. Evidently the case did not come to vote.[2] Interesting is the threat of Cicero[3] as curule aedile to bring to trial before the people C. Verres and all who should by bribery aid his acquittal. The circumstance that Cicero was ready to place so great a function upon the aedileship is proof of the confusion into which the ideas of popular jurisdiction had fallen through infrequent use.[4] Another anomaly is the prosecution begun by P. Clodius against T. Annius Milo on the charge of violence (vis).[5] It took place in the Forum before the comitia tributa, but we do not know whether it came to a vote.

III. *Pontifical Jurisdiction*

In the exercise of his disciplinary power the supreme pontiff sometimes imposed a fine on a sacerdos under his authority. An appeal to the thirty-five tribes was allowed, if the amount of the penalty reached the appealable limit.[6] After the analogy of the civil magistrate the pontiff presided over the assembly during the trial.[7] In 189 Q. Fabius Pictor, who was at the same time praetor and flamen Quirinalis, was forbidden by the supreme pontiff to go to the province assigned him. After much contention the pontiff imposed a fine, and an appeal was

[1] Lange, *Röm. Alt.* ii. 586; Mommsen, *Röm. Staatsr.* ii. 496.

[2] Cic. *Rosc. Am.* 12. 33; Val. Max. ix. 11. 2; Lange, ibid. iii. 134; Greenidge, *Leg. Proced.* 352.

Valerius Maximus, vi. 1. 8, refers to a prosecution (probably aedilician) of Cn. Sergius by Metellus Celer for stuprum, which seems to have occurred about this time; cf. Mommsen, *Röm. Staatsr.* ii. 493, n. 4.

[3] *Verr.* i. 12. 36; v. 58. 151; 67. 173; 69. 178; 71. 183.

[4] Cf. Lange, *Röm. Alt.* ii. 586.

[5] Cic. *Q. Fr.* ii. 3; *Sest.* 44. 95; *Vat.* 17. 40; Ascon. 49; Dio Cass. xxxix. 18 ff.; Lange, *Röm. Alt.* ii. 586; Mommsen, *Röm. Staatsr.* ii. 493, n. 1; Greenidge, *Leg. Proced.* 341, 353.

On the aedilician jurisdiction in general, see especially Girard, *Org. jud. d. Rom.* 243 ff.

[6] P. 269, 287.

[7] Wissowa, *Relig. u. Kult. d. Römer*, 439 f.; Mommsen, *Röm. Staatsr.* i. 195 f.; ii. 36.

taken to the people, who decided that the flamen must obey the pontifex maximus, and on that condition remitted the fine.[1] In 180 L. Cornelius Dolabella was fined for refusal to resign his office of naval duumvir that he might be inaugurated rex sacrificulus. The case was decided as the preceding, but an unfavorable omen which dissolved the assembly deterred the pontiffs from inaugurating him.[2] A similar case occurred in 131.[3] In the appeal of Claudius, an augur, from a pontifical fine, the date of which is unknown, though it probably followed the trials above mentioned, the people sustained the accused.[4] These are the few recorded cases of appeal from sacerdotal jurisdiction. The moderation of the pontifex maximus, together with the respect of his sacerdotes for religion, usually served to prevent the need of recourse to the people. It is a noteworthy fact that the custom was practically conterminous with the era of the most highly developed plutocracy. The circumstance that in all the cases known to have fallen within this period the people confirmed the authority of the pontiff affords striking evidence of the perfection to which the optimates had now brought the religious machinery of their political system.[5]

From what has been said on the judicial functions of the comitia in this and earlier chapters, it is clear that the jurisdiction of the people is inseparably connected with the political and constitutional history of Rome. Beginning feebly in the early republic, the right of appeal was most intensely exercised from the middle of the third to the middle of the second century B.C. Its decline thereafter, owing mainly to the rise of the quaestiones, was a symptom of the general decay of the republic.

Peter, C., *Epochen der Verfassungsgesch. der röm. Republik*, 118–140 (on the general character of the period); Ihne, W., *History of Rome*, iv. 125 ff., 171–3, 321–32; Mommsen, *Röm. Staatsrecht*, ii. 317–27, 491–7; *Die Scipionenprocesse*, in *Röm. Forsch.* ii. 417–510; Lange, *Röm. Altertümer*, ii. 582–93; Herzog, *Gesch. u. Syst. der. röm. Staatsverfassung*, i. 811 f., 1177 f.; Greenidge, A. H. J., *Legal Procedure of Cicero's Time*, 327–66; Mispoulet, J. B.,

[1] Livy xxxvii. 51. 4 f. [2] Livy xl. 42. 9 f. [3] Cic. *Phil.* xi. 8. 18.

[4] Fest. 343. 6; Wissowa, *Relig. u. Kult. d. Römer*, 439, n. 8. For the pontifical cases above mentioned, see also Lange, *Röm. Alt.* ii. 593–5.

[5] Cf. ch. v and p. 322.

Les institutions politiques des Romains, i. 228 f.; Willems, *Droit public Romain*, 175 ff.; Girard, P. F., *Histoire de l'organisation judiciaire des Romains*, i. 235 ff.; Hallays, A., *Comices à Rome*, 70 f.; Stella Maranca, *Il tribunato della plebe dalla lex Hortensia alla lex Cornelia*; Gerlach, *De vita P. Cornelii Scipionis Africani Superioris*; *P. Cornelius Scipio Africanus der Aeltere und seine Zeit*; Nissen, *Kritische Untersuchungen über die Quellen der vierten und fünften Dekade des Livius*, 213 ff.; Bloch, G., *Observations sur le procès des Scipions*, in *Revue des études anciennes*, viii (1906). 93–110, 191–228, 287–322; Pascal, C., *Studi Romani*, i: *Il processo degli Scipioni*; ibid. iii: *L'Esilio di Scipione Africano Maggiore*; *Di un studio recente sul processo degli Scipioni*, in *Riv. d. storia ant.* iv (1899). 268–71; Niccolini, G., *La questione dei processi degli Scipioni*, ibid. iii. fasc. 4 (1898). 28–75; articles in Pauly-Wissowa, *Real-Encycl.* i. 448–64: Aedilis (Kubitschek); 584–8: M. Aemilius Scaurus (Klebs); iv. 702–5: Comitia, part of (Liebenam); 1462–70: P. Cornelius Scipio Africanus Major (Henze); 1471–83: L. Cornelius Scipio Asiagenus (Münzer); v. 1324–7: Cn. Domitius Ahenobarbus (ibid.); Daremberg et Saglio, *Dict.* i. 95–100: Aedilis (Humbert); see also ibid. s. Comitia.

CHAPTER XV

COMITIAL LEGISLATION

From Hortensius to the Gracchi

287–134

I. *An Era of Repose*

287–232

The Hortensian enactment which raised the plebiscite to an equality with the lex and gave the tribunician initiative full constitutional freedom[1] seems to have been especially calculated to prepare for a splendid outburst of legislative energy. No such result, however, was actually reached. Circumstances prove the leaders of the plebs to have been well satisfied with the political gains thus far made as regards (1) their place in the senate assured them by the Ovinian statute,[2] (2) their right to the magistracies, confirmed by various laws, (3) the powers of the tribunate and its relation to the senate established by the Hortensian statute. Content with their position as a branch of the widened nobility, inferior neither politically nor socially to the patrician branch, and happy in the enjoyment of authority, they were now as much inclined as the patricians to discourage and to resist further aggression on the part of the plain citizens. Their control of the initiative in legislation was the chief means of forwarding this policy. Their respect for the senate, in which they were now rapidly becoming the dominant party, was such that they were willing to forego the recently acquired privilege of bringing their rogations before the people without the senatorial sanction. But in case a tribune was so bold and so out of harmony with his political peers as to offer an unsanctioned bill, they could count on the intercession of one of his colleagues; if matters came to an extremity, the

[1] P. 313 f. [2] P. 307.

senate could annul the act after its adoption by declaring it illegal or contrary to the auspices.[1] Evidently the plebeian nobles were aware, too, that with the increase in the number of citizens and with their dispersion over Italy the assembly had ceased to represent the citizen body, and was failing in ability to grapple with the new and increasingly complex problems of administration created by the widening of the Roman domain.[2]

Under these new conditions the assemblies continued, it is true, to elect their annual magistrates and to receive appeals from the judicial decisions of the latter, more rarely to declare war or to ratify a treaty. Occasionally they passed a law to increase the number of magistrates or to regulate elections; but for the fifty-five years following the Hortensian legislation, 287–232, there is no record of the enactment of a distinctly administrative law. The silence of history on this point is due not so much to the exceptionally scant sources[3] as to a lack of comitial activity.

First among the statutes relating to the election of magistrates is to be placed the Maenian plebiscite, adopted in 287 or thereabout, which directed the patres in case of elections, as the Publilian statute had directed them in case of rogations,[4] to give their auctoritas before the voting began, while the issue was still uncertain.[5] Blocking the last efforts of the patricians to monopolize the consulship,[6] the act completed the reduction of the patrum auctoritas to a formality. The sources represent Appius Claudius Caecus as the chief offender whom this law was designed to rebuke. His personality had brought

[1] P. 107, 113.

[2] On the lack of a popular opposition to the nobility during this period, see Ihne, *Hist. of Rome*, iv. 26. On the antiquated character of the assemblies, ibid. 39 f.

[3] For this era we have to depend upon the epitome of Livy and occasional notices of other authors. The complete Livian narrative which treats of the age, should it ever be discovered, would doubtless reveal a considerable number of other comitial measures; but we could hardly expect to find any of more importance than those which are actually known.

[4] P. 235, 300.

[5] Cic. *Brut.* 14. 55. Cicero informs us that the law under consideration was passed after the tribunate of M'. Curius, which must have preceded his consulship (290). The enactment should preferably be placed after that of Hortensius, when the patres were no longer in a position to oppose it; cf. Lange, *Röm. Alt.* i. 409; ii. 216, 654; Herzog, *Röm. Staatsverf.* i. 281 f. Willems, *Sén. Rom.* ii. 69 ff., attempts to assign it to 338.

[6] Livy x. 15. 7 ff.; Cic. ibid.

to the censorship an enormous accretion of power which disturbed the constitutional balance. In this period that magistracy assumed also the function of supervising the morals of the citizens.[1] To check this disproportionate growth a law, probably tribunician, of 265 forbade reëlection to the office.[2]

The Romans created no more absolutely new magistratus ordinarii. In 267, however, probably by an act of the comitia tributa, they doubled the number of quaestors — from four to eight — in order that the new members of the college might attend to the financial business of the government at various points in Italy.[3] A second praetor was created in 242,[4] doubtless by a law, not only for jurisdiction inter peregrinos but also for increasing the number of magistrates available for military commands.[5] The tresviri capitales, instituted in 289,[6] were given the rank of magistrate by a plebiscite of L. Papirius, adopted after 242, which directed the urban praetor to elect these officials in the comitia tributa.[7] In 241 the people, probably in tribal assembly, granted to L. Caecilius Metellus on account of his blindness the privilege of riding to the Curia in a carriage.[8]

One statute referred to this period[9] belongs to the domain of

[1] Dion Hal. xix. 16. 5 (xviii. 19); xx. 13 (3). 3.

[2] In this year C. Marcius Rutilus, elected censor a second time (*Fast. cos. capit.*, in *CIL.* i^2. p. 22), persuaded the people to adopt this law; Val. Max. iv. i. 3; Plut. *Cor.* 1; Lange, *Röm. Alt.* i. 797; ii. 122, 654; Herzog, *Röm. Staatsverf.* i. 317–20; Mommsen, *Röm. Staatsr.* i. 520.

[3] Livy, ep. xv; Tac. *Ann.* xi. 22. Lydus, *Mag.* i. 27, supposes the newly created quaestors to have been naval officers, and wrongly states their number at twelve. Whether the lex Titia de provinciis quaestoriis (Cic. *Mur.* 8. 18; Schol. Bob. 316) belongs to this date or to some later time cannot be determined; Mommsen, *Röm. Staatsr.* ii. 532, n. 3; Lange, *Röm. Alt.* ii. 654. See further on the act of 267, Mommsen, ibid. ii. 527, 570 ff.; Lange, ibid. i. 891; ii. 124.

[4] Livy, ep. xix; Lyd. *Mag.* i. 38, 45.

[5] Val. Max. ii. 8. 2; Zon. viii. 17. 1; 18. 10; Polyb. ii. 23. 5.

[6] P. 307, n. 1, 312.

[7] Fest. 347. 3; cf. Lange, *Röm. Alt.* i. 884, 910; ii. 654; Mommsen, *Röm. Staatsr.* ii. 594 f.; Girard, *Organ. jud. d. Rom.* i. 263 ff.

[8] Pliny, *N. H.* vii. 43. 141; cf. Polyb. vi. 16. 3.

[9] We are informed by Theophilus, iv. 3. 15, that this statute was a plebiscite adopted at a secession of the plebs, meaning most probably that of 287. But his view may be merely an inference from Ulpian, in *Dig.* ix. 2. 1 and Pomponius, ibid. i. 2. 2. 8; cf. Roby, *Rom. Priv. Law*, ii. 186. The law is the subject of *Dig.*

private law. The first chapter of the tribunician lex Aquilia provided "that if a slave of another man, or a quadruped of his cattle, be unlawfully slain, whatever within a year is the highest value thereof, that amount the offender shall pay to the owner."[1] The second chapter secured the principal stipulator against adstipulators, and the third provided for all other kinds of damage.[2] It superseded all previous statutes on the subject, including that of the Twelve Tables.

II. *The Flaminian Era*[3]

232–201

Such is the scant list of legislative acts of the half century following the dictatorship of Hortensius (287–232), none of them as innovating as, for instance, the reform of the comitia centuriata brought about in approximately the same period by the power of the censors alone.[4] The nobles had a certain degree of reason for feeling secure in their control of the administration. But in this respect they miscalculated. The long war with Carthage, which had diverted the attention of all the citizens from politics, ended without bringing in the wake of victory the usual rewards to the masses. No lands in Sicily were assigned to the citizens, while on their northeastern border the Picene district and the territory recently taken from the Gauls in the neighborhood of Ariminum were reserved by the nobles for their own occupation. Popular discontent at these

ix. 2 f.; Justinian, *Inst.* iv. 3; Theoph. *Inst.* iv. 3. Voigt, *Röm. Rechtsgesch.* i. 69, assigns it to 287. On p. 71 f. he adds other chapters which he has gathered from various sources. See also Karlowa, *Röm. Rechtsgesch.* ii. 793 ff. Injury committed by dogs was made actionable by the lex Pesolania of unknown though early date; Paul. *Sent.* i. 15. 1; cf. *Dig.* ix. 1. 1. 15. Voigt, *Röm. Rechtsgesch.* i. 39, n. 18, assigns it to the time closely following the decemviral legislation; cf. Cuq, in Daremberg et Saglio, *Dict.* iii. 1158.

The lex Mamilia concerning arbitri, but not more definitely known (Cic. *Leg.* i. 21. 55), may belong to the consul C. Mamilius, 239.

[1] Gaius iii. 210, Poste's rendering; cf. also the following §§; Justin. *Inst.* iv. 3. 15.

[2] Gaius iii. 215, 217; cf. Ulpian, in *Dig.* vii. 1. 13. 2; Cic. *Brut.* 34. 131.

[3] As here used, "Flaminian" is not confined to the lifetime of Flaminius, but designates the period during which lasted the impetus given by him to the activity of the assemblies — approximately to the end of the war with Hannibal.

[4] P. 213, 215.

short-sighted, selfish proceedings found expression in the rogation of C. Flaminius, tribune of the plebs in 232, for the assignment of the lands here mentioned to the citizens who were willing to settle on the frontier.[1] It was vehemently opposed by the nobility,[2] and was finally passed without the authorization of a senatus consultum.[3] From a statement of Cicero[4] that as long afterward as 228 Q. Fabius Maximus, then consul a second time, was hindering Flaminius from dividing the land, we may infer that the author of the law was elected among the tresviri charged with its administration.[5] Most of the settlers in that region were assigned to the tribe Velina, probably in pursuance of an article of the Flaminian statute.[6] The enactment came as a disagreeable interruption to the quiet happiness of the nobles — as a sign that the political battle fought out between comitia and senate in the period ending with the Hortensian legislation was to be renewed with perhaps even greater bitterness. Hence Polybius, echoing the complaints of the nobles, denounces the measure as the first step toward the demoralization of the people.[7] The lasting hatred felt by the senators for this new and powerful enemy is seen in their refusal to grant him a triumph for military successes he had won as consul in 223. A plebiscite without their authorization gave the desired privilege to the champion of popular rights.[8] It was probably in this connection — at least we are soon to hear of it for the first time — that an act of the people was made essential to a triumph within the city. Henceforth even when the senate was willing to allow a triumph or an ovation, the person thus honored could not hold imperium in the city on

[1] Cato, *Orig.* ii. 10 (in Varro, *R. R.* i. 2. 7): "Ager Gallicus Romanus vocatur, qui viritim cis Ariminum datus est ultra agrum Picentium"; Cic. *Brut.* 14. 57; *Acad. Pr.* ii. 5. 13. There is reason for believing that about this time the Licinian-Sextian agrarian enactments were revived and extended by a comitial statute; p. 296, 363.

[2] Cf. Cic. *Inv.* ii. 17. 52; Val. Max. v. 4. 5.

[3] Cic. *Acad. Pr.* ii. 5. 13; Val. Max. ibid.

[4] *Senec.* 4. 11.

[5] Cf. Lange, *Röm. Alt.* ii. 149.

[6] Kubitschek, *Rom. trib. or.* 26 f.; Mommsen, *Röm. Staatsr.* iii. 176.

[7] II. 21. 8. On this law in general, see further Ihne, *Hist. of Rome*, ii. 125–7; iv. 26 f.; Herzog, *Röm. Staatsverf.* i. 344 ff.; Long, *Rom. Rep.* i. 157 f.; Ferrero, *Rome*, i. 15.

[8] Zon. viii. 20. 7; Plut. *Marcell.* 4; cf. Livy xxi. 63. 2.

the day of such festival excepting by a comitial lex. Usually in cases of the kind the senate, after voting the privilege, instructed a praetor to request one of the tribunes to bring a rogatio de imperio before the tribes.[1] The earliest known act of the kind is the plebiscite of 211 which granted the imperium to M. Marcellus, proconsul on the day of his ovation.[2]

The popular party had not long to wait for an opportunity to retaliate upon the senate for the slight it had offered their champion. On the precedent of the Ovinian law[3] the people had a right to legislate concerning the honors, privileges, and qualifications of its individual members.[4] In 219 accordingly the plebiscite of Q. Claudius, known to have been supported in the senate by C. Flaminius alone, who was then censor, prohibited senators and their sons from owning sea-going ships of more than three hundred amphoras capacity.[5] It was probably an article of this statute which forbade the same class of persons to take contracts from the government, with the reservation of such economically insignificant agreements as concerned worship.[6] The peasants, whose interests Flaminius represented, opposed the renewal of the war with Carthage, regarding it as a means of extending the field of commerce and speculation of the nobles. This law therefore expresses the determination of

[1] Livy xlv. 35. 4.

[2] Livy xxvi. 21. 5. Next is mentioned the plebiscite of Ti. Sempronius, 167, for granting the imperium to three promagistrates; Livy xlv. 35–40; cf. xxxii. 7. 4; xxxviii. 47. 1; Plut. *Aemil.* 30 ff. The triumphs of Pompey, 80 and 71, must have been made possible by leges de eius imperio, though none are mentioned; Plut. *Pomp.* 14, 21; Cic. *Imp. Pomp.* 21. 61 f. The lex Cornelia, 80, which permitted Pompey to bring his army home from Africa, was essential to the triumph but was not the law which granted the imperium; Sall. *Hist.* ii. 21; Gell. x. 20. 10; Plut. *Pomp.* 13; Lange, *Röm. Alt.* ii. 678. The law for the triumph over Juba was passed for Caesar in 48 in advance of his victory; Dio Cass. xliii. 14. 3. There must have been many other such plebiscites not mentioned by the sources. Magistrates had no more right than promagistrates without especial authorization to command troops within the city limits, though the triumph on the Alban Mount continued to be permissible without an act either of the senate or of the comitia; p. 293.

[3] P. 307.

[4] Polyb. vi. 16. 3.

[5] Livy xxi. 63. 3; cf. Herzog, *Röm. Staatsverf.* i. 353, 898; Nitzsch, *Röm. Rep.* i. 156 f.

[6] Ascon. 94; Dio Cass. lv. 10. 5; Lange, *Röm. Alt.* ii. 162, 657; Herzog, *Röm. Staatsverf.* i. 898.

the country people that the senatorial families should no longer share the advantages of such wars. From the point of view of the statesman it was the first step toward the separation of the governing class from the commercial class, with a view to guarding against the administration of the government in the sole interest of capital. The result was not all that could be desired; the senatorial families found secret ways of placing a great part of their funds in commercial companies; and in so far as the law was actually effective, it compelled senators to invest money in Italian land[1] — a proceeding which contributed largely to the economic ruin of the peninsula.

In the administration of finance, which in spite of occasional interference on the part of the comitia remained with the senate, is included the regulation of coinage. The comitia passed few acts relating to the subject. The earliest known to history is the misnamed lex minus solvendi of C. Flaminius, consul in 217, which introduced the uncial standard for the *as*, making for ordinary use sixteen asses of an ounce weight equivalent to ten old — in other words, to the denarius.[2] In the payment of soldiers, however, the denarius was still reckoned at ten asses.[3] Probably the same law regulated the issue of plated silver denarii[4] and of gold coins.[5] The debtor's gain was offset by the actual decrease in the weight of the *as* to a little more than an ounce before the enactment of the law.[6] This measure was followed the next year by the plebiscite of M. Minucius, which created the triumviri mensarii, a banking commission for relieving the great lack of money (216).[7] The board managed some of the financial business of the state,[8] and undoubtedly did what it could to strengthen private credit, which at this

[1] App. *B. C.* 1. 7. 29; Plut. *Ti. Gracch.* 8.

[2] Fest. 347. 14; Pliny, *N. H.* xxxiii. 3. 45; cf. Hill, *Greek and Rom. Coins*, 48. According to Festus, Flaminius was author, whereas Pliny states that the change was made under the dictatorship of Q. Fabius Maximus. One seems to refer to the enactment of the law, the other to its administration.

[3] P. 90. [4] Zon. viii. 26. 14. [5] Pliny, *N. H.* xxxiii. 3. 47.

[6] Böckh, *Metrologische Utersuchungen*, p. 472; Mommsen-Blacas, *Hist. d. monn. Rom.* ii. 67, n. 1; Lange, *Röm. Alt.* i. 496; ii. 167, 674; Herzog, *Röm. Staatsverf.* i. 365; Kubitschek, in Pauly-Wissowa, *Real-Encycl.* ii. 1511; Samwer-Bahrfeldt, *Röm. Münzw.* 190 f.

[7] Livy xxiii. 21. 6; cf. Ihne, *Hist. of Rome*, ii. 289.

[8] Livy xxiv. 18. 12; xxvi. 36. 8.

time was at a low ebb.[1] The next step taken by the comitia was the enactment of a plebiscite within a field properly belonging to the censors under senatorial supervision — the building and repair of public works.[2] In 212 the act of an unknown tribune, carried through the comitia with the consent of the senate, created three temporary administrative boards — quinqueviri for repairing the defences of the city, triumviri to seek for property belonging to the temples and to register gifts, and another board of three for repairing the temples of Fortune, Mater Matuta, and Hope. These officials were to be elected by the tribes under the chairmanship of the urban praetor.[3] Nearly related is the plebiscite of 210, which in pursuance of a senatus consultum directed the censors to farm the vectigalia of the Campanian territory.[4] Evidently in the trying time of the war with Hannibal the senate found it advisable to conciliate the citizens by voluntarily bringing a few administrative measures of the kind before it. All this legislation was due more or less directly to the influence of Flaminius. A succession of sumptuary laws may be likewise traced to his second consulship, 217. The Twelve Tables contained a number of laws relating to funerals, designed to preserve good order and to prevent extravagant expense.[5] After their ratification the authority of the magistrates and especially of the censors sufficed for the maintenance of good conduct, till in the period of the Punic wars the character of the people began to suffer deterioration, whereupon the assemblies undertook to enact new laws for the enforcement of morality. One of the earliest was the lex aleaaria, which prohibited the game of dice. Its mention by Plautus makes it prior to 204.[6] The name of the author is not given; and for that reason we cannot be sure that it was a comitial law.[7] To the same period belongs the plebiscite of P. and M. Silius

[1] Livy xxxvii. 51. 10; cf. Lange, *Röm. Alt.* ii. 173 f.; Herzog, *Röm. Staatsverf.* i. 365.

[2] Cf. Livy xli. 27; Polyb. vi. 17.

[3] Livy xxv. 7. 5 f.

[4] Livy xxvii. 11. 8.

[5] Tab. x, in Schöll, *Duod. Tab. Rel.* 153 ff.; Marquardt, *Privatl. d. Röm.* 345.

[6] *Mil.* 164; Hor. *Od.* iii. 24. 58; Ovid, *Trist.* ii. 471 ff.; cf. Cic. *Phil.* ii. 23. 56; Pseud. Ascon. 110; Hartmann, in Pauly-Wissowa, *Real-Encycl.* i. 1359. It remained in force to the end of the republic. Other laws on gambling, which cannot be assigned to dates, were the lex Cornelia (*Dig.* xi. 5. 3), the lex Publicia (ibid.), and the lex Titia (ibid.).

[7] Lange, *Röm. Alt.* ii. 663, 670.

concerning weights and measures.[1] The first comitial sumptuary statute is the lex Metilia (217), probably tribunician, passed under the influence of C. Flaminius and L. Aemilius, who were censors in 220. It prescribed certain rules for the preparation of cloth.[2] The object, in Lange's [3] opinion, was to strike at the luxury of the nobles through the guild of fullers. It was a warning to them, he asserts, which however they failed to heed. If this was indeed the object, the means were surprisingly feeble. The next sumptuary law was the plebiscite of C. Oppius, 215, directed against the luxury of wealthy women. It forbade a woman to wear more than a half ounce of gold or a dress of various colors or to ride in a carriage in a city or town or within a mile of either, excepting when engaged in public worship.[4] The author must have sympathized with the tendency of Flaminius, and the law was supported, or at least not opposed, by the nobility. Twenty years afterward their best representatives strove in vain to maintain it against the rising tide of wealth and luxury.[5]

The influence of Flaminius on legislation may be traced still farther. Under the economic distress of the war with Hannibal the plebs began to lapse into clientage to the nobles. In spite of the principle that the patron should accept no honorarium for legal service,[6] the nobles began by the requisition of gifts to render the commons tributary to themselves.[7] The chief occasion for these exactions was found in the Saturnalia, which was reconstituted in 217.[8] To check the abuse the Publician plebiscite mentioned by Macrobius,[9] undoubtedly of C. Publicius Bibulus, the popular tribune of 209,[10] prohibited all gifts from the poor to the rich on that festival with the excep-

[1] Fest. 246. 32; Lange, *Röm. Alt.* ii. 662.

[2] Pliny, *N. H.* xxxv. 17. 197. A M. Metilius was tribune in 217.

[3] *Röm. Alt.* ii. 161 f., 670; cf. Herzog, *Röm. Staatsverf.* i. 354.

[4] Livy xxxiv. 1 ff.; Tac. *Ann.* iii. 33 f.; Oros. iv. 20. 14; Zon. ix. 17; cf. Ihne, *Hist. of Rome*, ii. 290.

[5] P. 356. The lex lenonia mentioned by Plautus (Fest. ep. 143), if indeed it is not a mere joke, should also be classed as sumptuary; cf. p. 528, n. 2.

[6] Polyb. vi. 56; Plut. *Rom.* 13.

[7] Livy xxxiv. 4. 9: "Vectigalis iam et stipendiaria plebs esse senatui coeperat."

[8] Livy xxii. 1. 19; Wissowa, *Relig. u. Kult. d. Röm.* 170.

[9] *Sat.* i. 7. 33.

[10] Livy xxvii. 20. 11.

tion of wax candles. It was supplemented in 204 by the plebiscite of M. Cincius Alimentus,[1] which absolutely forbade gifts and fees for legal service.[2] The prohibition of a magistrate's acceptance of gifts for the performance of official duty was undoubtedly included in it.[3] Moreover it forbade all gifts above a specified amount, but with exceptions in favor of various relatives and benefactors.[4]

It is not unlikely that the Flaminian age saw the earliest comitial legislation governing judicial procedure in private cases.[5] Some changes were wrought, too, in family law by popular vote. In early time intermarriage between persons of the sixth degree of kinship was forbidden by usage;[6] but in the period between the first and second Punic wars the right was

[1] Livy xxix. 20. 11.

[2] Livy xxxiv. 4.9; Cic. *Senec.* 4. 10; *Orat.* ii. 71. 286; *Att.* i. 20. 7; Fest. ep. 143, including a quotation from Plautus; Tac. *Ann.* xi. 5; xiii. 42; xv. 20; Frag. Vat. 260 ff. (Ad legem Cinciam de donationibus); Bruns, *Quid conferant Vaticana fragmenta ad melius cognoscendum ius Romanum*, 112 ff.; Herzog, *Röm. Staatsverf.* i. 366; Garofalo, in *Bull. dell' ist. di diritt. Rom.* xv (1903). 310-2. In the opinion of Lange, *Röm. Alt.* ii. 191, the law may have resulted in part from the selfishness of the rich, with a view to checking the presentation of gifts among themselves.

[3] Cic. *Leg.* iii. 4. 11; *Lex Iul. Col. Gen.* 93; Mommsen, *Ephem. Ep.* ii. 139; Bruns, *Font. Iur.* p. 123.

[4] Vat. Frag. 294, 298–309; Paulus, *Sent.* v. 11. 6; Roby, *Rom. Priv. Law*, i. 526 f.

[5] Such was the lex Pinaria, which ordered the appointment of a judge on the thirtieth day after an action was instituted (Gaius iv. 15); also the lex Silia creating the legis actio per condictionem, for the recovery of a certain sum of money, extended by the lex Calpurnia so as to apply to any certain object; Gaius iv. 18 f., and comment by Poste; Greenidge, *Leg. Proced.* see index, s. Lex Calpurnia and Silia; Roby, *Rom. Priv. Law*, ii. 71; Karlowa, *Röm. Rechtsgesch.* ii. 594; *Röm. Civilprocess*, 230 ff.; Voigt, *Röm. Rechtsgesch.* i. 44 ff. On the probable date, Lange, *Röm. Alt.* see indices, s. v. — The lex Crepereia, having to do with a legis actio before the centumviral court, set the sponsia at a hundred and twenty-five sesterces; Gaius iv. 95. — The lex Aebutia tended to substitute for the legis actio the formulary process of later time; Gaius iv. 30 f.; Gell. xvi. 10. 8; Greenidge, ibid. 93, 170 ff.; Roby, ibid. ii. 347; Karlowa, *Röm. Civilproc.* 216, 324; Voigt, ibid. 124 ff. Lange assigns these laws to the period of the war with Hannibal, Voigt to earlier time.

To the year 214 Lange, *Röm. Alt.* ii. 660, assigns the lex Atinia on the usucapio of stolen property; Gell. xvii. 7; Just. *Inst.* ii. 6. 2; *Dig.* xli. 3. 4. 6; cf. Roby, ibid. i. 475. — No date can be found for the lex Licinnia de actione communi dividundo; Marcianus, in *Dig.* iv. 7. 12.

[6] Livy xx, Frag.; Krüger and Mommsen, in *Hermes*, iv (1870). 371–6; Tac. *Ann.* xii. 6. Livy states that a marriage of a patrician with a relative of the sixth degree caused a riot of the plebs, which drove the patres for refuge to the Capitol.

extended to relatives of the fifth and sixth degrees,[1] and shortly afterward to those of the fourth degree (consobrini).[2] Another law, the lex Atilia, enacted between 242 and 186,[3] probably in the second Punic war,[4] directed the urban praetor to appoint a tutor for a woman or child who was left without a natural protector.[5] It now became possible, too, for a magistrate under justifying circumstances to place a young man under twenty-five in the care of a curator, in accordance with the Plaetorian law,[6] which was enacted before 192,[7] and which belongs therefore to the Flaminian age.[8]

In the same period we find the comitia active in other fields. In 215 a tribal law of an unknown author granted the citizenship to three hundred Campanian knights who had remained faithful to Rome, and assigned them to the municipium of Cumae.[9] Following a precedent set by the Antistian plebiscite of 319,[10] L. Atilius, tribune of the plebs in 210, carried a law, in pursuance of a senatus consultum, for granting the senate absolute power over the Campanians who had revolted;[11] and the senate accordingly not only punished them with loss of citizenship but reduced them to miserable subjection.[12] The right of the comitia to ratify a vow of a sacred spring was recognized in 217 by an opinion rendered by the pontiffs,[13] and was first exercised through a plebiscite of that year.[14] The appointment of commissioners for the dedication of temples also belonged to

[1] Ulpian, Frag. v. 6; cf. *De gradibus cognationum.*

[2] Plut. *Q. R.* 6; Livy xlii. 34. 2 (case of a man's marrying his cousin shortly after the war with Hannibal); Lange, *Röm. Alt.* i. 126; ii. 659 f.; Marquardt, *Privatl. d. Röm.* 30 f.

[3] Livy xxxix. 9. 7.

[4] Lange, *Röm. Alt.* ii. 659 f.

[5] Cf. Lange, ibid. i. 231; Karlowa, *Röm. Rechtsgesch.* ii. 27. It supplemented the Twelve Tables, v. 1 f. (Gaius i. 144; ii. 47; Schöll, *Duod. Tab. Rel.* 126).

[6] Cic. *Off.* iii. 15. 61; *N. D.* iii. 30. 74; Varro, *L. L.* vi. 5; *Lex Iul. Munic.* 112.

[7] Plaut. *Pseud.* 303; *Rud.* 1382.

[8] The author may have been the Plaetorius who carried a law concerning the urban praetor; p. 342, n. 1; Karlowa, *Röm. Rechtsgesch.* ii. 306, thinks it the result of continual war, which while giving young men experience in military affairs, deprived them of the opportunity to acquaint themselves with the management of property.

[9] Livy xxiii. 31. 10.

[10] P. 310.

[11] Livy xxvi. 33. 10–4. For the decree of the plebs, § 14: "Quod senatus iuratus, maxima pars, censeat, qui adsient, id volumus iubemusque."

[12] Ibid. ch. 34.

[13] Livy xxii. 10. 1.

[14] It is given in full by Livy xxii. 10; cf. xxxiii. 44. 1 f.; xxxiv. 44. 1–3.

the assembly,[1] as well as the regulation of religious festivals.[2] The greatest gain made by the people within the province of religious legislation in the third century B.C. was the provision for electing the pontifex maximus by seventeen tribes drawn by lot from the whole number thirty-five and presided over by a pontiff. This innovation probably belongs to the Flaminian era and certainly to the time before 212, when the first instance of such an election is given.[3] The act was followed by another, before 209, which authorized the election of the chief curio in the same way.[4] The object was to take the control of these places from the nobles, who looked upon the great sacerdotal collegia as a main support of their political power.[5] It was but the beginning of a movement for transferring the appointment of all members of these collegia to the comitia sacerdotum, made up as above described. In the peculiar composition of assemblies of this character we see an attempt to make the gods in some degree coadjutors of the populace in filling the sacred places.[6]

The assembly was merely exercising a long-recognized right[7] in the institution of two new praetors in 227, for which we are

[1] The consular law of Ti. Sempronius Longus, 215, appointing duumviri, one of them the builder, Q. Fabius, for dedicating the temple of Venus Erucina; Livy xxiii. 30. 13. f. — The lex granting Q. Lutatius Catulus permission to dedicate the Capitoline temple, 78; Cic. *Verr.* II. iv. 31. 69; 38. 82; *CIL.* i. 592. — The rogation of the praetor Caesar, 62, which threatened to deprive Catulus of the function; Suet, *Caes.* 15; Dio Cass. xxxvii. 44. 2.

[2] In consequence of a pestilence a pretorian law of P. Licinius Varus, 208, placed the games in honor of Apollo in the class called stativi — those which were celebrated annually on stated days; Livy xxvii. 23. 7; xxx. 38. 10 f.; cf. Wissowa, *Relig. u. Kult. d. Röm.* 241; Fowler, *Roman Festivals*, 179 f.

[3] Livy xxv. 5. 2, for the first instance and for the pontifical presidency. Such a departure in favor of the people was hardly possible in the period of comitial stagnation preceding the tribunate of Flaminius, 232; and the law must have been passed, or at least amended, after the institution of the last two tribes; for it specified definitely seventeen tribes; Cic. *Leg. Agr.* ii. 7. 16. On this measure, see Mommsen, *Röm. Staatsr.* ii. 27 f.; Wissowa, *Relig. u. Kult. d. Röm.* 437; Lange, *Röm. Alt.* ii. 131. Pais, *L'elezione del pontefice massimo*, etc. (1908), maintains on the contrary that the plebiscite in question was passed about 254, and that it resorted to seventeen tribes as the legal half of the total number (33) then existing. On the use of the word comitia, see p. 130 above.

[4] The first recorded instance occurs at the date mentioned; Livy xxvii. 8. 1–3.

[5] Cf. Cic. *Sest.* 46. 98. [6] P. 391. [7] P. 234, 305, 306.

warranted in assuming a legislative act.[1] The same observation applies to the increase in the number of elective military tribunes from sixteen to twenty-four in 207,[2] which was evidently a concession to the commons. As the senate generally attended to the prolongation of the imperium,[3] the confirmation of a senatorial decree to that effect by an act of the people in 208[4] was exceptional. Far more radical was the plebiscite of M. Metilius, 217, for equalizing the power of the dictator with that of the master of horse.[5] This act and the resort to election for filling the office[6] destroyed the value of the institution.[7] A violent departure from usage was attempted in 209 by the rogation of C. Publicius Bibulus, tribune of the plebs, for abrogating the proconsular imperium of M. Claudius Marcellus. On this occasion not merely the plebs but all classes attended the assembly, which by an overwhelming vote rejected the proposition.[8] Three quarters of a century were to pass before a law of the kind could actually carry.[9]

A plebiscite known to have been in force in the time of the second Punic war[10] debarred from the tribunate and aedileship of the plebs any person during the lifetime of a father or grandfather who had filled a curule office. As the aim was to free the plebeian officials from the influence of the nobility, exercised through the patria potestas, that they might be in

[1] Livy, ep. xx; *Dig.* i. 2. 2. 32. Lange, *Röm. Alt.* i. 784; ii. 152, 654, conjecturally identifies it with the Plaetorian plebiscite, which assigned two lictors to the urban praetor when acting as judge, and defined his jurisdiction; Censorin. 24. 3.

[2] Livy xxvii. 36. 14; p. 306 above. In 171 because of the impending Macedonian war the consular lex Licinia Cassia permitted the consuls to name their tribuni militum (Livy xliii. 31) — a precedent followed thereafter in emergencies.

[3] P. 305; Polyb. vi. 15. 6.

[4] Livy xxvii. 22. 6. On the comparatively frequent use of the promagistracy during the war with Hannibal, see Ihne, *Hist. of Rome*, iv. 310.

[5] Livy xxii. 25; Herzog, *Röm. Staatsverf.* i. 355.

[6] Polyb. iii. 87. 6; Livy xxii. 8. 5 f.

[7] Cf. Herzog, ibid. i. 358 f.; Mommsen, *Röm. Staatsr.* ii. 169.

[8] Livy xxvii. 20. 11–3; 21. 1–4; Plut. *Marcell.* 27. It is surprising that in 204 the question of abrogating the proconsular imperium of Scipio through a plebiscite was discussed in the senate; Livy xxix. 19. 6.

The grant of a burial place "virtutis caussa senatus consulto populique iussu" (*CIL* i. 635) to a C. Poplicius Bibulus was not to this Bibulus but to some unknown person of the same name near the close of the republic.

[9] P. 360.

[10] Livy xxvii. 21. 10; xxx. 19. 9.

a better position to serve the interests of their constituents, we may reasonably suppose this measure to have passed in the time of Flaminius and under his influence. The tendency was to widen the breach then forming between the nobility and the commons.[1] The right of the people to dispense from the law was acknowledged by the senate in 217, when, after the destruction of the army at Trasimene and the death of Flaminius, the patres authorized a plebiscite for dispensing the consulars for the remainder of the war from the Genucian plebiscite which forbade reëlection to the same office excepting after an interval of ten years.[2]

From what has been given above it is clear that Flaminius began a new era in legislation, by no change in the constitution, but rather by assuming the free initiative granted the tribunes of the plebs through the Hortensian statute. Under the influence of his personality the comitia recovered the share in the administration which they had lost in the half century of lethargy just passed, and even made new inroads into the province of magisterial and senatorial authority. While the disaster at Cannae, following hard upon that of Trasimene, subdued the rising spirit of popular independence, it made the senate more conciliatory,[3] with the result that neither did the comitia lapse into its former repose nor did the nobles lose their hold on the government. It was to this era, more definitely to the opening of the war with Hannibal, that the description of the constitution by Polybius[4] applies. The political condition of Rome was improving,[5] or was just at its zenith.[6] As the senate was at the height of its power, public measures were deliberated upon, not by the many, but by the best men.[7] Political life was sound, elections were pure,

[1] Lange, *Röm. Alt.* i. 850, 861; ii. 151, 654.

[2] Livy xxvii. 6. 7; cf. p. 298 above. Two other dispensations from laws by act of the people are recorded for the latter part of this century: (1) the plebiscite of 203, which exempted C. Servilius from the law prohibiting the election of a man to the plebeian tribunate or aedileship in the lifetime of a father who had filled a curule office (Livy xxx. 19. 9); (2) a plebiscite of 200 for permitting L. Valerius Flaccus to take the oath of office for the aedileship as a proxy for his brother, who being flamen Dialis was forbidden to swear; Livy xxxi. 50. 7–9.

[3] Cf. Herzog, *Röm. Staatsverf.* i. 369.

[4] VI. 11. 1.

[5] VI. 51. 3.

[6] Ibid. § 5.

[7] Ibid. § 7.

and a scrupulous fear of the gods remained the strongest support of the commonwealth.[1] At this epoch the three chief constitutional elements — magistrates, senate, and comitia — were so perfectly balanced that even a native would hardly be able to say whether the form of government was monarchy, aristocracy, or democracy.[2] In this equilibrium of forces, in this mutual power of checking or strengthening, lay the might and the excellence of the constitution.[3]

It is solely with the place of the assemblies in this system that we are at present concerned. Inasmuch as the consuls were supreme masters of the home administration, as well as of the actual conduct of war,[4] and as the senate controlled finance, diplomacy, and all interstate judicial business affecting the Italian allies,[5] what part in the government could have been left to the people? Polybius answers a most weighty part. They are constitutionally the sole fountain of honor and punishment, by which alone governments and societies are held together. Not only are they in a position to discriminate between the fit and the unfit in elections to office, but they are the sole court for trying cases involving life and death. The death penalty, however, may be avoided by voluntary exile, if undertaken before a majority has been reached in the process of voting.[6] Even finable actions in which the proposed penalty is considerable, especially when the accused has held a higher magistracy, come before them. It is they who bestow offices on the deserving — the most honorable reward which the constitution grants to virtue. It is they who have absolute power to decide concerning the adoption or repeal of laws; and most important of all, it is they who deliberate concerning war and peace, and who ratify or reject proposals for alliances, truces, and treaties.[7] These facts might lead one to suppose that the supreme power is with the people and that the government is a democracy.[8] In the

[1] Polyb. vi. 56. [2] Ibid. II. 11. [3] VI. 18.
[4] VI. 12. [5] VI. 13. [6] P. 217, n. 5.
[7] A plebiscite of M'. Acilius and Q. Minucius, 201, ordered the senate to negotiate peace with Carthage; Livy xxx. 43. 2. Tribal ratification may be assumed for every treaty, and for that reason is generally not mentioned in this volume.
[8] Polyb. vi. 14.

domestic administration the consuls are dependent on them for authorizing various kinds of business and are under obligations to execute their decrees.[1] In war, however distant from home, the consul must still court their favor, to secure their ratification of his arrangements for peace; and on laying down his office he is liable to prosecution before them for maladministration.[2] Hence he can afford to neglect them no more than he can the senate.[3]

The senate, too, is dependent upon the people for ratifying all serious penalties imposed by the courts, which are made up of senators.[4] Similarly in matters directly concerning that body, the people have power to accept or reject proposals for diminishing its traditional authority, for depriving its members of dignities or offices, or even for lessening their means of livelihood.[5] But the greatest popular restriction upon its authority is the tribunician veto, which can prevent it from passing a decree or even from holding a meeting. As the tribunes are under obligations to carry into effect the decisions of the people and in every way to have regard for their wishes, — for this and for the other reasons mentioned, the senate respects the people and cannot fail to neglect their feelings.[6]

From the foregoing remarks of Polybius it is clear that in the political theory of his time the will of the multitude when expressed by a comitial act prevailed, in other words that the people were sovereign. Several checks on their action from the side of the senate and magistrates he mentions, especially the absolute power of life and death exercised by the consuls in war over those under their command,[7] and the control over the citizens wielded by the senate through the management of public contracts and through filling the courts from its own number. But the most important limitation, implied throughout this discussion though never expressly mentioned, is the lack of popular initiative. The people could convene for no business whatever

[1] Polyb. vi. 12. 4. [2] VI. 15. 9 f. [3] Ibid. § 11.

[4] VI. 16. 1 f. Polybius speaks of the decisions of the senate; but since that body as a whole was not a court, and since there was no appeal from either the special or the standing quaestiones, he must be thinking here of the consilia of the magistrates, which also were composed of senators.

[5] VI. 16. 3. Doubtless he has in mind the Claudian statute of 219; p. 335.

[6] VI. 16. 4 f. [7] VI. 17. 9.

unless summoned by a magistrate. They could consider no other subject than that proposed to them by the president; they could take no part in the deliberation excepting in so far as the president granted permission to individuals; they could merely vote yes or no on the question presented to them.[1] Notwithstanding the theory of popular sovereignty these conditions prevented the rise of a real democracy; they placed the assemblies under the control of the magistrates, who as a rule, including even the tribunes, were willing ministers of the senate. The bridled masses were rendered more obedient by the disasters of the war with Hannibal, and the nobles were soon to grow arrogant and violent through a surfeit of wealth and power.[2] Under these new circumstances the docility of the commons made possible the thorough organization of plutocracy on the basis of a democratic theory of government.

III. *The Era of the Completed Plutocracy, based on a Recognition of Popular Sovereignty*

201–134

The period from the close of the war with Hannibal to the tribunate of Ti. Gracchus is marked by no such display of comitial energy as that which characterized either the pre-Hortensian age or the epoch introduced by Flaminius. In return for a spurious freedom and a pretended share in the administration the assembly became the handmaid of the plutocracy.

There was, as usual, some legislation of the old kind concerning magistrates. In 198 the number of praetors was increased to six.[3] The arrangement was modified by the consular statute of M. Baebius, 181, which provided for the election of four and six on alternate years,[4] with the object of giving the governors of the Spains a biennial term.[5] The greedy office-seekers by another statute brought about the repeal of this arrangement

[1] P. 33, 173. [2] Polyb. vi. 18. 5–8; Sall. *Iug.* 41.

[3] Livy xxxii. 27. 6. A law may be assumed for this act.

[4] Livy xl. 44. 2; cf. Mommsen, *Röm. Staatsr.* ii. 198, n. 4; more accurately, Lange, *Röm. Alt.* ii. 259, 655; Klebs, in Pauly-Wissowa, *Real-Encycl.* ii. 2728.

[5] Cf. Arnold, *Rom. Prov. Administr.* 47.

in 179.[1] The only new office was that of the tresviri epulones, instituted by a plebiscite of C. Licinius Lucullus, 196. Their function was to attend to certain religious festivals, especially to the feast of Jupiter held on November 13. The law provided that these officials should wear the toga praetexta just as did the pontiffs.[2]

A stage in the development of the plutocracy and of its control over the plebeian tribunate is marked by the enactment of the lex annalis of L. Villius, tribune of the plebs in 180. This statute not only fixed the ages at which men might sue for and hold the various patrician magistracies,[3] but also, developing a custom already in existence, established an interval, evidently of two years,[4] between consecutive magistracies. The stated object was to curb the greed for office which the young nobles were manifesting[5] as well as the eagerness of the people to favor such ambitious persons, and for that reason it received the support of Cato.[6] While it prevented the Scipios and the Flaminini from creating a dynastic oligarchy, by checking the growth of exceptional talent and by subjecting statesmen to a fixed routine of honors and functions it subordinated the individual to the class, and in this way aided the consolidation of the senatorial plutocracy.[7] To the same period, at all events after 194,[8] belong the Licinian and Aebutian plebiscites, which

[1] Cato, *Orat.* xxv; Fest. 282. 28; Non. Marc. 470; Livy xl. 59. 5.

[2] Livy xxxiii. 42. 1; cf. Cic. *Orat.* iii. 19. 73; Lange, *Röm. Alt.* ii. 211 f., 675; Wissowa, *Relig. u. Kult. d. Röm.* 357, 446. The people continued occasionally to create temporary magistracies and commissions. A lex Plaetoria for the appointment of duoviri aedi dedicandae (*CIL.* vi. 3732) probably belongs to 151; cf. Mommsen, *Röm. Staatsr.* ii. 621, n. 1.

[3] Livy xl. 44. 1. Cf. in general on the leges annales, Fest. ep. 27; Cic. *Phil.* v. 17. 47; *Leg.* iii. 3. 9; Ovid, *Fast.* v. 65 f.; Tac. *Ann.* xi. 22; Arnob. ii. 67. A rogation of similar import was offered by a certain M. Pinarius Rusca (Cic. *Orat.* ii. 65. 261), who is perhaps to be identified with a praetor of that name in 182; Livy xl. 18. 2; Mommsen, *Röm. Staatsr.* i. 529, n. 1.

[4] This interval is assigned to the lex Villia by none of the ancient authorities, but is found to be the practice after its enactment; Mommsen, *Röm. Staatsr.* i. 526 f.

[5] Cic. *Phil.* v. 17. 47. [6] Cf. Plut. *Cat. Mai.* 8.

[7] Wex, in *Rhein. Mus.* iii (1845). 276–88; Nipperdey, in *Abhdl. sächs. Gesellsch. d. Wiss. zu Leipzig*, v. (1870). 1–88; Lange, *Röm. Alt.* i. 707; ii. 259–61, 655; Mommsen, *Röm. Staatsr.* i. 529 f., 537; Herzog, *Röm. Staatsverf.* i. 386 f., 664 ff.; Madvig, *Röm. Staat.* i. 335 ff.; Kübler, in Pauly-Wissowa, *Real-Encycl.* iv. 1114.

[8] They were not in force in 196 (Livy xxxiii. 42. 1) or in 194 (Livy xxxiv. 53. 1 f.;

prohibited the presiding magistrate from offering as candidates for any extraordinary office himself, his colleagues, and his relations by blood or marriage. This measure, too, was to prevent the formation of governing cliques and dynasties. In 151, the year after the third consulship of M. Claudius Marcellus,[1] to check the further aggrandizement of this man as well as the rise of similar personalities, a law, supported by Cato,[2] absolutely forbade reëlection to the consulship.[3] Cato's idea may have been to expedite the advancement of novi homines; but so far from accomplishing this object, the measure contributed to the further subordination of the individual to the plutocratic machine.[4] It may well have been in the same partisan spirit rather than in the interest of political morality that P. Cornelius and M. Baebius Tamphilus, consuls in 181, carried a law ex auctoritate senatus for the prosecution of bribery. It disqualified for office for ten years any person found guilty of influencing an election through bribery or other illegal means.[5] Probably through this measure the nobles aimed to curb the greed of office in the more ambitious and unscrupulous of their number; but it accomplished nothing, and was followed in 159 by another consular lex de ambitu of Cn. Cornelius Dolabella and M. Fulvius Nobilior, which increased the penalty to death.[6] Practically the punishment was exile. This law had no more effect than the earlier; and the conduct of the nobles both before and after its enactment proves that they did not intend

xxxv. 9. 7). On the other hand Cicero's description (*Dom.* 20. 51; *Leg. Agr.* ii. 8. 21) of these laws as veteres should place them a hundred years or more before his time. The two passages of Cicero are the only sources; cf. Lange, *Röm. Alt.* i. 919; ii. 315 f., 655; Herzog, *Röm. Staatsverf.* i. 835. Mommsen, *Röm. Staatsr.* i. 501, thinks they may have resulted from the Gracchan agitation.

[1] *CIL.* i^2. p. 146; Obseq. 18.

[2] *Orat.* xxxvi.

[3] Livy, ep. lvi (mentioned in connection with the year 134); Long, *Rom. Rep.* i. 85–7. Long does not consider the date settled; but see Mommsen, *Röm. Staatsr.* i. 521; Greenidge, *Hist. of Rome*, i. 485; Kübler, in Pauly-Wissowa, *Real-Encycl.* iv. 1117.

[4] Lange, *Röm. Alt.* i. 712; ii. 316, 655.

[5] Livy xl. 19. 11; Schol. Bob. 361; Lange, *Röm. Alt.* i. 717; ii. 257, 663; Ihne, *Hist. of Rome*, iv. 92; Herzog, *Röm. Staatsverf.* i. 391; Hartmann, in Pauly-Wissowa, *Real-Encycl.* i. 1801, Mommsen, *Strafr.* 867, n. 2.

[6] Polyb. vi. 56. 4; Livy, ep. xlvii; Lange, *Röm. Alt.* i. 717; ii. 312, 663; Ihne, *Hist. of Rome*, iv. 92; Hartmann, ibid.

by it to open the consulship to the competition of novi homines.

The limitation upon the judicial imperium of magistrates and promagistrates by the three Porcian laws of appeal, which belong to this period, has been considered in connection with popular jurisdiction.[1] The last of these acts affected the administration of the provinces and of military affairs, which belonged originally to the magistrates and the senate. It was only by degrees that the people interfered in this department. The earliest known act of the kind was the consular lex de sumptu provinciali of M. Porcius Cato, 195, for limiting the expenses of provincials in the support and honor of the governor.[2] To prevent conflicts in the provinces between the incoming and the retiring governor, Cato favored a regulation, adopted probably in 177, whether a lex or a senatus consultum has not been determined, to the effect that the imperium of the outgoing functionary should cease on the arrival of the new.[3] It was still more unusual for the people to take part in the organization of a new province; but in 146 a lex Livia, probably tribunician, commissioned P. Scipio Aemilianus, assisted by ten legati, to organize the province of Africa.[4]

In foreign affairs the assemblies took the same part as in the preceding period; the centuries continued to declare war and the tribes to ratify peace. In 196 the tribunician lex Marcia Atinia compelled the consuls against their will to conclude a treaty with Macedon.[5] In 149 L. Scribonius Libo, tribune of

[1] P. 250. — Of minor importance is the lex Rutilia, 169, which besides confirming the earlier statute for the election of twenty-four military tribunes (p. 342) defined the rights of the tribuni "rufuli" and "a populo" respectively; Fest. 261. 29; ep. 260; cf. Livy vii. 5. 9; xxvii. 36. 14; Marquardt, *Röm. Staatsv.* ii. 365. — The rogation of Ti. Sempronius, tr. pl. in 167, for granting the imperium to certain promagistrates for the day of their triumph has been considered above; p. 335, n. 2.

[2] *Lex Ant. de Termess.* in *CIL.* I. 204. ii. 13–7; cf. Livy xxxii. 27. 3 f. (cutting down such expenses in Sardinia); xxxiv. 4; cf. Lange, *Röm. Alt.* ii. 207, 673; Ihne, *Hist. of Rome*, iv. 307.

[3] Cato, *Orat.* lxix, in Gell. xx. 2. 1; cf. Livy xxxii. 8. 3; xli. 14. 11; Lange, *Röm. Alt.* ii. 280, 673.

[4] App. *Lib.* 135; Cic. *Leg. Agr.* ii. 19. 51. Appian and Cicero speak of a senatus consultum only; but a lex Livia is vouched for by the *Lex Agr.* of 111; *CIL.* i. 200. 81; cf. Mommsen, *Röm. Staatsr.* ii. 643; Marquardt, *Röm. Staatsv.* i. 465.

[5] Livy xxxiii. 25. 6. A lex Maevia, seemingly on Asiatic affairs, supported by Cato but otherwise unknown, belongs perhaps to 189; Cato, *Orat.* lxxv.

the plebs, attempted in vain to secure the adoption of a rogation for restoring liberty to the Lusitanians, whom the praetor Servius Galba had treacherously enslaved.[1] No less characteristic of the age is the consular lex of L. Furius and Ser. Atilius, 136, for surrendering C. Mancinus to the Numantines because without the consent of the senate he had made an unfavorable treaty with them.[2] The deterioration in the character of Roman generalship and warfare is indicated by a statute of unknown authorship, enacted after 180,[3] which forbade a triumph to a commander who had not killed at least five thousand of the enemy in a single battle.[4] The intention of the law, however, which obviously was to prevent commanders from triumphing for fictitious or insignificant victories, was circumvented by falsifications regarding the number of enemies slain or by triumphs on the Alban Mount.[5]

Whereas before the second century B.C. no mention is made of a comitial act for the founding of a colony, in the beginning of the period now under consideration the function was exercised by the people three or four times in quick succession. In 197 was enacted the tribunician statute of C. Atinius for planting five colonies — Vulturnum, Liternum, Puteoli, Salernum, and Buxentum — on the coast of Italy, each to consist of three hundred families, the execution of the measure to be in the hands of triumviri, who were to hold their office three years.[6] Not long afterward a plebiscite of Q. Aelius Tubero provided for founding two Latin colonies, one in Bruttium, the other at Thurii, each by triumviri, who likewise held office three years. The measure was authorized by a senatus consultum, 194.[7] In the same year a tribunician law of M. Baebius Tamphilus provided for the establishment of three Roman colonies.[8] Mention

[1] Livy, ep. xlix; new ep. l. 98–100; Cic. *Brut.* 23. 89; *Att.* xii. 5. 3; Val. Max. viii. 1. absol. 2.

[2] Cic. *Off.* iii. 30. 109.

[3] Livy xl. 38. 9; cf. 59. 1 (179 B.C.).

[4] Val. Max. ii. 8. 1; Oros. v. 4. 7; cf. Cic. *Pis.* 26. 62; Livy xxxvii. 46. 1 f.; xl. 38. 9; Gell. v. 6. 21; Lange, *Röm. Alt.* ii. 262, 676; Mommsen, *Röm. Staatsr.* i. 133.

[5] P. 293.

[6] Livy xxxii. 29. 3 f. These colonies were actually founded in 194; Livy xxxiv. 45. 1; Vell. i. 15. 3.

[7] Livy xxxiv. 53. 1 f. The former was founded in 192; Livy xxxv. 40. 5.

[8] *Lex Agr.* of 111, in *CIL.* i. 200. 43; Livy xxxiv. 45.

of colonial legislation by the people then ceases. Although the phenomenon may be due in some cases to the sources, this explanation does not generally hold good, especially as the colonization of the years 189[1] and 184[2] is expressly attributed to the senate, and because Velleius[3] credits that body with the founding of all the colonies from the Gallic conflagration to his own time. Probably before the Gracchi a senatorial decree was issued in every case, and though the commissioners for conducting colonies were as a rule elected by the tribes after 296,[4] the people were given but a taste of power within this administrative field.[5]

Early in the second century B.C. we find creditors rioting in usury, unchecked by the various statutes which had been enacted against the evil. They discovered a way of circumventing the law by transferring their securities to citizens of an allied state, who had a right to force the collection of debts under the law of their own community. To put a stop to this kind of fraud the senate decreed that after a stated date allies who lent money to Roman citizens should register the transaction, and that in suits for the collection of such money the debtor should have the privilege of choosing under which law, whether that of Rome or of the allied community, the suit against him should be tried. As the registers provided for the purpose showed that an enormous amount of fraud was still being committed in circumvention of the law and of the senatorial act,

[1] Livy xxxvii. 57. 7.

[2] Livy xxxix. 55. 5. On the colonies of 181, see Livy xl. 29. 1; 34. 2; Vell. i. 15; *CIL.* i. 538, in which nothing is said either of the senate or of the people.

[3] I. 41. 1. [4] P. 307, 311.

[5] It was in the capacity of administrator of public property that the senate controlled this field. The only other instance of popular legislation in this period touching state economy was the plebiscite of M. Lucretius, 172 (Livy xlii. 19. 1 f.; cf. xxvii. 11. 8; Gran. Licin. xxviii), for renewing the tribunician law of 210, which directed the censors to farm the vectigalia of Campania; p. 337 above. — In 169 a tribunician rogation of P. Rutilius threatened to annul the censorial contracts (Livy xliii. 16. 6) as a rebuke to the censors for their arbitrary management of the business. When this object was secured, the bill was allowed to drop. It is true, as Ihne, *Hist. of Rome*, iv. 24, n. 1, remarks, that no one questioned the right of the people to cancel an administrative act of the censors; but it was quite another thing to find a college of tribunes unanimously disposed to interfere. The significant fact is that in all the time between the peace with Hannibal and the tribunate of Ti. Gracchus no important financial act was passed by the comitia.

M. Sempronius, tribune of the plebs in 193, ex auctoritate patrum proposed and carried a statute which ordered that money lent between a Roman citizen and one of a Latin or other allied state should be collected under Roman law.[1] This is one of the earliest instances of unfairness introduced by Rome into the private relations between her citizens and those of her allies.[2]

Family law underwent some modification. A plebiscite of Q. Voconius Saxa, 169,[3] provided that no citizen assessed at a hundred thousand asses or more should will his property to a woman.[4] Another article limited to a half of the estate the amount which any legatee, male or female, could receive.[5] Dowries were regulated by a lex Maenia, which seems to belong to 186.[6]

In the bestowal of the citizenship the people were unhampered. Doubtless for some time after the Hortensian legislation comitial acts for this purpose were commonly authorized by senatus consulta; but in the year 188 we first hear the enunciation of the principle that the people without the authority of the senate had the power to bestow the ius suffragii on whomsoever they pleased.[7] The principle was carried into immediate effect by the tribunician statute of C. Valerius Tappo, which without a senatus consultum conferred the right of suffrage on the Formiani, Fundani, and Arpinates, who hitherto had been cives sine suffragio. The determination of the tribe to which new citizens should belong was also provided for by the legisla-

[1] Livy xxxv. 7; cf. Lange, *Röm. Alt.* ii. 221, 660.

[2] A rogatio Iunia concerning usury, known only through Cato's opposition to it (*Orat.* vi), belongs to this period — perhaps to 195 (Livy xxxiv. 1. 4; xxxv. 41. 9 f.) or to 191 (Livy xxxvi. 2. 6).

[3] Livy, ep. xli.

[4] Cic. *Verr.* II. i. 41. 104 ff.; *Rep.* iii. 10. 17; Gaius ii. 274; Dio Cass. lvi. 10. 2; Pseud. Ascon. 188; Gell. vi (vii). 13; xx. i. 23; p. 90 above.

[5] Gaius ii. 226 and Poste's comment; Lange, *Röm. Alt.* ii. 298, 660; Greenidge, *Leg. Proced.* 95, 128; Roby, *Rom. Priv. Law*, i. 345. It took the place of a lex Furia of earlier date for limiting to one thousand asses the amount which a legatee or, in view of death, a donee could accept; Gaius, ibid.; Karlowa, *Röm. Rechtsgesch.* ii. 940 ff. Voigt, *Röm. Rechtsgesch.* i. 502, places the lex Furia between 203 and 170.

[6] Cato, *Orat.* lxviii, lxxv; Lange, *Röm. Alt.* ii. 660; Voigt, *Die lex Maenia de dote vom Jahre 568 der Stadt; Röm. Rechtsgesch.* i. 789–801, attempts to determine the contents as well as the date; cf. Arndts, in *Zeitschr. f. Rechtsgesch.* vii (1868). 1–44.

[7] Livy xxxvii. 36. 7 f.; cf. Cic. *Verr.* II. i. 5. 13.

tive act of admission.[1] The citizenship granted in this period continued occasionally to be limited. The Campanians, excluded forever from the rights of the state in 210,[2] were in 188 placed under the census by a senatus consultum of the preceding year and were given intermarriage probably by a similar act.[3] In early time, at least before 184, the custom arose of granting to the founders of a colony the right to enroll as citizens a specified number of aliens. The first recorded instance belongs to the year mentioned, in which the poet Ennius received the citizenship in accordance with such a law.[4] It was by the pretorian comitia tributa that the priestesses of Ceres, who were Greeks from Naples, Velia, or Sicily, were admitted to the citizenship.[5] Perhaps by the same assembly, at all events by an act of the people, a slave who deserved well of the state was given his liberty, which involved citizenship.[6] Such grants to single individuals by the people, however, must have been rare.[7] A Roman taken captive in war, recovered all his rights simply by returning home (postliminium).[8] But even when an entire community was brought into the state by a single vote, the wording of the law indicates that the inhabitants received the honor as individuals and not in mass.[9] It was permissible for independent communities and individuals to reject the offer of the franchise,[10] whereas subjects and partial citizens were compelled to

[1] Ibid. § 9; p. 57 f., 334 above. [2] P. 340. [3] Livy xxxviii. 36. 5 f.

[4] Cic. *Brut.* 20. 79; cf. Mommsen, *Röm. Staatsr.* iii. 135, n. 1.

[5] A pretorian law of Valerius Flaccus, 98, for the purpose is mentioned by Cic. *Balb.* 24. 55; cf. *CIL.* vi. 2181 f.; Pais, *Anc. Italy*, 309. Naturally before the establishment of the right of the people in this matter (p. 283, 304) the grant was made by the consuls and the censors. [6] Cic. *Balb.* 9. 24.

[7] Cf. the bestowal of citizenship upon the Carthaginian Muttines bya plebiscite ex auctoritate patrum in 210; Livy xxvii. 5. 7; Varro, in Ascon. 13.

[8] See the literature on the ius postliminii in Schiller, *Röm. Staatsalt.* 618. There were certain cases of restoration of citizenship, however, which were thought to require a comitial vote; Cic. *Balb.* 11. 28. But on this question opinions differed; cf. Mommsen, *Röm. Staatsr.* iii. 656, n. 1.

[9] Cf. the lex Plautia Papiria, in Cic. *Arch.* 4. 7: "Data est civitas Silvani lege et Carbonis: Si qui foederatis civitatibus adscripti fuissent, si tum, cum lex ferebatur, in Italia domicilium habuissent et si sexaginta diebus apud praetorem essent professi"; also *Balb.* 8. 19 (singillatim); *CIL.* ii. 159; iii. 5232 (viritim); Mommsen, *Röm. Staatsr.* iii. 132.

[10] Gell. xvi. 13. 6; Cic. *Balb.* 8. 21. Heraclea and Naples preferred their freedom; Cic. ibid.; *Fam.* xiii. 30. 1.

accept it.[1] From the facts here stated it will immediately appear that after the people had acquired an unconditioned right to extend the Roman franchise, they made little use of the opportunity. The senate could well afford to concede to them a power which they cherished a growing disinclination to use. The expansion of the empire had at length so enhanced the value of citizenship that the masses were unwilling except on the rarest occasions to share its advantages with others.[2] Any attempt, therefore, on the part of aliens to usurp the rights of the city was resented. In 187 we find the senate appointing the praetor Q. Terentius Culleo extraordinary commissioner for determining by investigation who from the Latin towns had recently usurped the citizenship, and for expelling from Rome those found guilty of the offence.[3] Soon afterward the people extended their power over such cases; in 177 a second expulsion of the Latins was brought about by a consular law of C. Claudius Pulcher.[4]

The same spirit prompted the citizens to limit the political rights of freedmen. There can be no doubt that early Rome was as liberal in the treatment of this class as of aliens. From earliest times they had a right to acquire land; and such proprietors were undoubtedly enrolled in the tribes in which their estates were situated.[5] From the beginning, however, custom deprived them of the ius honorum[6] and of conubium. The former they acquired along with the other plebeians, although they were less readily admitted to the actual enjoyment of it;[7] the latter they continued to lack.[8] They were exempt, too,

[1] Mommsen, *Röm. Staatsr.* iii. 133.

[2] This spirit expressed itself in the lex Minicia of unknown date, though probably anterior to the social war. It ordered that children born of a union between a Roman and a person of a nationality with which there was no conubium should follow the condition of the alien parent; Gaius i. 78 f.; Ulp. v. 8; Karlowa, *Röm. Rechtsgesch.* ii. 182.

[3] Livy xxxix. 3. 5 f.

[4] Livy xli. 9. 9–11; Neumann, *Gesch. Roms*, i. 21, 115; Herzog, *Röm. Staatsverf.* i. 964, n. 1; Meyer, *Gesch. d. Gracch.* 92, n. 1.

[5] Mommsen, *Röm. Staatsr.* iii. 435 f.; cf. however Lange, *Röm. Alt.* ii. 27; Herzog, *Röm. Staatsverf.* i. 993.

[6] Lange, *Röm. Alt.* i. 705; ii. 27. [7] Livy ix. 46; Plut. *Mar.* 5.

[8] Livy xxxix. 19. 5 f.; Cic. *Sest.* 52. 110; *Phil.* ii. 2. 3. A law of Augustus, 18 B.C., permitted all excepting senators to marry freedwomen; Dio Cass. liv. 16. 2;

from ordinary military service.[1] In time their condition became worse. C. Flaminius as censor in 220, in the interest of the rural plebs,[2] began arbitrarily to assign all the libertini, whether they had lands or not, to the four city tribes,[3] doubtless at the same time to the supernumerary centuries of the comitia centuriata.[4] But the sons of freedmen, themselves originally libertini,[5] came in time to be looked upon as ingenui, with the same legal rights as the old citizens. This change seems to have been effected by the plebiscite of Q. Terentius Culleo, 189, for compelling the censors to admit to the senate the sons of free parents — undoubtedly those sons of libertini who were born after the emancipation of the father.[6] The law must have involved the principle of treating such persons as citizens optimo iure, and have therefore required their enrolment in the country tribes, provided they owned land. As the acquisition of full rights came only with the death of the father, which made the son sui iuris, the application of the principle must have required the enrolment of the fathers along with the sons in the rural tribes; in other words, it recognized as citizens optimo iure those libertini who had children,[7] on the basis of the existing custom of enlisting such persons in military service at crises.[8] The political connections of the author of this statute leads us to interpret it as a measure of the oligarchs for strengthening their position by the votes of their dependents.[9]

lvi. 7. 2. Conubium had not been impossible, but had been considered disgraceful both by society and by the law.

[1] Cf. Livy x. 21. 4; Lange, *Röm. Alt.* i. 515; ii. 27; p. 60 above.

[2] P. 334.

[3] Livy, ep. xx; cf. Mommsen, *Röm. Staatsr.* iii. 436, n. 3. The statement of the epitomator is that by the censors "Libertini in quattuor tribus redacti sunt, cum antea dispersi per omnes fuissent, Esquilinam," etc. It refers either to the censorship of Flaminius (Herzog, *Röm. Staatsverf.* i. 995) or far less probably to the one immediately preceding. On the city tribes, see p. 64.

[4] P. 205 f.

[5] Suet. *Claud.* 24; Livy vi. 46. 6; Pliny, *N. H.* xxxiii. 2. 32; cf. Mommsen, *Röm. Staatsr.* iii. 422; Herzog, ibid. i. 977.

[6] Plut. *Flamin.* 18.

[7] Lange, *Röm. Alt.* ii. 234; Mommsen, *Röm. Staatsr.* iii. 436 f. This interpretation seems necessary notwithstanding Herzog, *Röm. Staatsverf.* i. 884.

[8] As in 217; Livy xxii. 11. 8.

[9] In general, see Ihne, *Hist. of Rome*, iv. 26–38; Mommsen, *Röm. Staatsr.* iii. 420 ff.; Herzog, *Röm. Staatsverf.* i. 976 ff., 992 ff.; Lange, *Röm. Alt.*, see index, s. Libertini. On the censorial distribution of the libertini in 179, see p. 85, n. 3.

The increasing wealth and luxury of the age naturally gave rise to sumptuary legislation; and the nobility could allow the comitia to revel in this field, devoid as it was of political significance. The first act, however, was to undo the Oppian law of 215[1] through the plebiscite of M. Valerius, 195, enacted probably without a senatus consultum.[2] It was the senate which initiated the tribunician statute of C. Orchius, 181, for limiting the number of guests at banquets.[3] Cato opposed the enactment of this measure on the ground that it was too easy,[4] but twenty years afterward he protected it from abolition.[5] It was reinforced in 161 by the lex cibaria of the consul C. Fannius Strabo, which prescribed that ordinary meals should cost no more than ten asses; on ten days of the month meals should cost no more than thirty; and on the days of the ludi plebeii, Saturnalia, and certain other great festivals, no more than a hundred.[6] It also forbade the use of fowls excepting one unfattened hen.[7] The lex Didia cibaria, pretorian or tribunician, 143, extended the application of the Fannian statute to all Italy, and rendered liable to punishment not only the host who violated the law but also the guests at such illegal repasts.[8]

Closely akin to sumptuary laws are those for the regulation of theatres and games. A plebiscite of Cn. Aufidius of unknown date, possibly 170,[9] permitted the importation of wild beasts from Africa for use in the circensian games. The statute repealed a senatus consultum which had prohibited such importation.[10] The arrangement of the social classes in the theatre and at the games was determined partly by law. It was the censors of 194, persuaded by Scipio Africanus the Elder,[11] who

[1] P. 338.

[2] Lange, *Röm. Alt.* ii. 174, 211, 670; Ferrero, *Rome*, i. 23.

[3] Macrob. *Sat.* iii. 17. 2; Diod. xxxvii. 3. 5; Ferrero, *Rome*, i. 23; Herzog, *Röm. Staatsverf.* i. 425.

[4] Macrob. ibid. § 3; Schol. Bob. 310; Fest. 242. 12.

[5] Fest. 201. 31; Cato, *Orat.* xxvii.

[6] Gell. ii. 24. 3; Macrob. *Sat.* iii. 17. 3–5; Athen. vi. 274 C.

[7] Pliny, *N. H.* x. 50. 139.

[8] Macrob. *Sat.* iii. 17. 6.

[9] The author may, as Lange, *Röm. Alt.* ii. 311, 672, assumes, be identical with the Cn. Aufidius who was tribune in that year; Livy xliii. 8. 2. Klebs, in Pauly-Wissowa, *Real-Encycl.* ii. 2288 f., regards the identity as no more than possible.

[10] Pliny, *N. H.* viii. 17. 64.

[11] Cic. *Cornel.* i. 25 (Frag. A. vii); Ascon. 69.

reserved the front seats for senators.[1] The assignment of fourteen rows to the knights next to those of the senators was effected by a plebiscite, possibly of 146, the author of which is unknown.[2]

For a long time the laws of the Twelve Tables administered by the magistrates, more rarely by a special court created sometimes by the senate but oftener and in better right during this period by the people,[3] sufficed for controlling crime. But as offences multiplied in consequence of the increasing complexity of life, the people were called upon more and more frequently to legislate on the subject.[4] One of the earliest may have been the lex Fabia de plagiariis,[5] against the usurpation of ownership over a Roman citizen without his consent or over his slave without the consent of the owner.[6] The date of its origin is unknown; but if Plautus[7] refers to it, as Voigt asserts,[8] it must have been in force before 197. For this and other reasons Voigt assigns it to Q. Fabius Verrucossus, consul in 209.[9] Lange prefers Q. Fabius Labeo, consul in 183,[10] whereas Mommsen places it after the Social war.[11] A lex Gabinia threatened with scourging and death any one who induced the people to gather in secret meetings. It seems to belong to the time of the Bacchanalian trouble, 186,[12] and to have been designed against religious associations of the kind; nevertheless the nobility found in it a means of repressing popular agitation.

On the authority of a mutilated passage in the newly found epitome of Livy an attempt has been made to assign to 149 the law of M. Scantinius (or Scatinius), probably tribune of the plebs, for imposing a fine of ten thousand sesterces on any one convicted of violating a man of free birth.[13]

[1] Livy xxxiv. 44. 4.

[2] Mention of this law is made in connection only with the Roscian statute of 67, which is spoken of as a restoration of an earlier act; p. 428 f. below.

[3] P. 253 ff.

[4] Cic. *Off.* ii. 21. 75.

[5] Cic. *Rab. Perd.* 3. 8.

[6] *Dig.* xlviii. 15.

[7] *Curc.* 621 f.; *Merc.* 664 f.

[8] In *Verhdl. d. sächs. Gesellsch. d. Wiss.* xxxvii (1885). 320.

[9] Ibid. 327.

[10] *Röm. Alt.* ii. 663; cf. *CIL.* i². p. 144.

[11] *Röm. Strafr.* 780, n. 4.

[12] *Declam. in Cat.* 19. Lange, *Röm. Alt.* ii. 664 f., prefers to assign it to the tribune of 139; Mommsen, *Röm. Strafr.* 563, n. 4, doubts its existence.

[13] Cic. *Fam.* viii. 12. 3; 14. 4; Suet. *Dom.* 8. 3 (Scantinius; Ihm); Juv. ii. 44;

The statute which established the first standing court — quaestio perpetua — was the lex Calpurnia de repetundis of the tribune L. Calpurnius Piso Frugi, 149.[1] His motive was undoubtedly a sincere desire to protect Italy[2] and the provinces from official rapacity. The court was made up of a considerable number of jurors drawn from the senate and presided over by a praetor, who had hitherto exercised civil jurisdiction only. In fact a trial for extortion was at first thought of as a civil suit for the recovery of wealth illegally taken — a conception which determined the organization of the Calpurnian quaestio. But from time to time new standing courts were instituted each with cognizance of a specified class of crimes, till before the end of the republic they had taken upon themselves practically all criminal jurisdiction, retaining little trace of their civil origin.[3] Between 149 and 141, for instance, was established a standing quaestio for the trial of cases of murder.[4]

It was in keeping with the oligarchic tendency of the age that a consular law of M'. Acilius Glabrio, 191, gave the pontiffs the function of determining which years should be intercalary and of how many days such years should consist. Thus these functionaries secured the means of bringing the solar and civil years into accord; but they used their new power mostly in the interests of their party, with the result that the confusion in the calendar increased rather than lessened.[5] The nobles made their greatest gain in the control of legislation and of

Quint. *Inst.* iv. 2. 69. Voigt, in *Verhdl. d. sächs. Gesellsch. d. Wiss.* xlii (1890). 273, assigns it to 226 or 225. Lange, *Röm. Alt.* ii. 667 f., places it between 227 and 50. The date 149 rests upon W. W. Fowler's restoration of the new epitome, 115 f.: "M. Sca(n)ti(ni)us . . . am tulit (de) in stupro deprehensi(s)." Quite another matter, however, is referred to in this passage, if Kornemann's reading is correct: "Sca(n)tius (qui repuls)am tulit in stupro deprehens(us se occidit)." The date of the law, therefore, still remains in doubt.

[1] Schol. Bob. 233; Cic. *Brut.* 27. 106; *Off.* ii. 21. 75; *Verr.* iii. 84. 195; iv. 25. 56; Val. Max. vi. 9. 10; Tac. *Ann.* xv. 20; Lex Acil. in *CIL.* i. 198. 23, 74, 81; Mommsen, ibid. p. 54 f.; *Strafr.* 708; Lange, *Röm. Alt.* ii. 321 f., 664; Greenidge, *Leg. Proced.* 419.

[2] In general the leges repetundarum were for the protection of Italy as well as of the provinces; cf. p. 376, 377, 442.

[3] Lengle, *Sull. Verf.* 17; Greenidge, *Leg. Proced.* 415 f.

[4] P. 255, n. 1 (3).

[5] Macrob. *Sat.* i. 13. 21; Censor. xx. 6. f.; Livy xliii. 11. 3; Lange, *Röm. Alt.* i. 353; ii. 223, 676; Mommsen, *Röm. Chron.* 40 ff.; Matzat, *Röm. Chron.* i. 46.

elections about the middle of the century through the statutes of Aelius and Fufius, probably tribunes of the plebs. By granting the patrician magistrates the obnuntiatio against the tribunes, or perhaps by confirming the former in a usurped power of the kind, it enabled the nobles to exercise a practical veto on tribunician legislation, and may for that reason be looked upon as the firmest support of the plutocracy.[1] An article of the statute forbade the bringing of a rogation before the people in the interval between the announcement and the holding of elective comitia.[2]

Toward the close of the period a democratic movement preliminary to the revolution began with the enactment of two important ballot laws. The first was the plebiscite of Q. Gabinius, 139, whom the optimates took pleasure in representing as ignoble and mean.[3] It introduced the ballot in elections with a view to freeing the voter from the influence of the nobility; for many of the poor were at this time falling into economic, and hence political, dependence on the rich.[4] The other was the plebiscite of L. Cassius Longinus Ravilla, 137, for extending the use of the ballot to all trials before the people with the exception of perduellio.[5] Cases coming under the law were those which involved fines imposed by the tribes under aedilician or tribunician presidency. Probably in the opinion of the author, a conscientious noble,[6] cases of perduellio were too rare to need the change or too solemn to admit of a disturbance of traditional usage. These measures had little immediate effect, for the nobles were as clever as the commons at exploiting the secret ballot for partisan objects[7]; yet the principle, when carried to completion by the supplementary laws on the subject in the years immediately

[1] P. 116; cf. Ihne, *Hist. of Rome*, iv. 308 f.

[2] Schol. Bob. 319; cf. Cic. *Sest.* 26. 56: "De tempore legum rogandorum."

[3] Livy, new ep. liv. 193 f.: "A. Gabinius verna(e . . . rogationem tulit) suffragium per ta(bellam ferri)," indicates servile descent.

[4] Cic. *Leg.* iii. 16. 35; cf. 15. 34; *Amic.* 12. 41; *Leg. Agr.* ii. 2. 4.

[5] Cic. *Leg.* iii. 16. 35 f.; *Brut.* 25. 97; 27. 106; *Sest.* 48. 103; *Amic.* 12. 41; Ascon. 78; Pseud. Ascon. 141 f.; Schol. Bob. 303; Long, *Rom. Rep.* i. 105–10; Lange, *Röm. Alt.* ii. 658; Herzog, *Röm. Staatsverf.* i. 422; Ihne, *Hist. of Rome*, iv. 340 f.

[6] Cic. *Rosc. Am.* 30. 84; Ascon. 46; Val. Max. iii. 7. 9; cf. Cic. *Brut.* 25. 97; Vell. ii. 10. 1; Val. Max. viii. 1. damn. 7.

[7] Cf. Lange, *Röm. Alt.* ii. 344; Ihne, *Hist. of Rome*, iv. 94.

following, contributed greatly to the success of the revolution.[1] Not without significance for the general trend of affairs is the circumstance that in these latter years of the completed plutocracy two dispensations were granted P. Scipio Aemilianus from laws which had been designed to secure it against the rise of great personalities. In 148 when he offered himself for the aedileship, being still too young for the consulship,[2] the people insisted on electing him to the latter office. "When the consuls showed them the law they became more importunate and urged all the more, exclaiming that by the laws handed down from Tullius and Romulus the people were judges of the elections, and of the laws pertaining thereto they could set aside or confirm whichever they pleased.[3] Finally one of the tribunes of the people declared that he would take from the consuls the power of holding an election unless they yielded to the people in this matter. Then the senate allowed the tribunes to repeal this law and after one year they reënacted it."[4] From this event it can be seen that when the tribunes and people were unitedly determined upon a measure, they were irresistible. It is evident, too, that in popular theory no laws could prevent the citizens from having the magistrates whom they chose to elect. Again in 135 a plebiscite, authorized by a senatus consultum, granted more speedily on this ocasion though doubtless with as great regret, exempted him from the law which absolutely forbade reëlection to the consulship.[5] It was equally ominous that in the preceding year the proconsulship of M. Aemilius Lepidus was abrogated, probably by an act of the comitia.[6]

Another premonition of the revolution was the renewal of agrarian agitation, with which in a varying degree some of the more enlightened nobles sympathized. It began slowly to dawn upon them that the economic ruin of the peasant class was endangering the state — a feeling which found expression in the agrarian rogation of C. Laelius, praetor in 145.[7] The measure

[1] See especially Cic. *Leg.* iii. 15. 34: "Quis autem non sentit omnem auctoritatem optimatium tabellariam legem abstulisse?"

[2] P. 347.

[3] P. 184.

[4] App. *Lib.* 112 (White's rendering); cf. Livy, ep. l.

[5] Livy, ep. lvi; App. *Iber.* 84.

[6] App. *Iber.* 83; cf. p. 188, n. 2, 342, 367.

[7] Cic. *Amic.* 25. 96; Lange, *Röm. Alt.* ii. 335, 688.

must have been similar to the Licinian-Sextian law as it threatened the interests of the rich.[1] When he saw that their opposition would be such as to disturb the public peace, he dropped the proposal. If he was in truth called Sapiens because of this speedy retreat, the epithet was too easily earned. Reform, while there was yet time, was blocked as much by the cowardice of the well-minded as by the enormous selfishness of the majority of nobles. It was in this time of extraordinary imperial prosperity that, in the opinion of Polybius, the constitution was successfully put to its severest test. "When these external alarms are past, and the people are enjoying their good fortune and the fruits of their victories, and, as usually happens, growing corrupted by flattery and sloth, show a tendency to violence and arrogance — it is in these circumstances more than ever that the constitution is seen to possess within itself the power of correcting abuses. For when any one of the three classes becomes puffed up, and manifests an inclination to be contentious and unduly encroaching, the mutual interdependence of all the three, and the possibility of the pretensions of any one's being curbed and thwarted by the others, must plainly check this tendency; and so the proper equilibrium is maintained by the impulsiveness of the one part's being checked by its fear of the other."[2] These words, which we may suppose to have been written after the tribunate of Ti. Gracchus,[3] accurately describe the interplay of constitutional forces in the period of the completed plutocracy and of the incipient revolution. Controlled in some instances by self-satisfaction and the spirit of repose and in others by greed and arrogance, the dominant institutions of government tended in the one case to sluggishness and decay, in the other to violence; whereas the harmony of the constitution, or its equivalent the soundness of Roman character, like a central sun, held the various institutions in the main to their respective orbits, compelling each to attend to its appropriate

[1] Plut. *Ti. Gracch.* 8.

[2] Polyb. vi. 18. 5–8 (Shuckburgh's rendering).

[3] The main part of his history was composed before the third war with Carthage; Christ, W., *Gesch. d. griech. Litteratur* (4th ed. 1905), 585; Cuntz, O., *Polybius und sein Werk* (1902), 82. It is understood, however, that certain parts were inserted after the beginning of the revolutionary period.

function. No retrospect of the Gracchan troubles induced the great historian to revise the view here expressed; for with his boundless faith in Rome he could never doubt that her constitution contained the cure of every evil which new conditions should breed within the state.[1]

Schulze, C. F., *Volksversammlungen der Römer*, 100–10; Peter, C., *Epochen der Verfassungsgesch. der röm. Republik*, 118–140 (on the general character of the period); Ihne, W., *History of Rome*, bk. vi; Long, G., *Decline of the Roman Republic*, I. chs. v, vii, viii; Mommsen, Th., *History of Rome*, bk. III, ch. xi; *Röm. Staatsrecht*, see index s. the various laws; Lange, L., *Röm. Altertümer*, ii. 116–351, and see index s. the various laws; *De legibus Aelia et Fufia commentatio*, in *Kleine Schriften*, i. 274–341; Neumann, C., *Geschichte Roms*, I. ch. i; Nitzsch, K. W., *Die Gracchen und ihre nächsten Vorgänger*, bks. i, ii; Willems, *Droit public Romain*, 178 ff.; Mispoulet, J. B., *Les institutions politiques des Romains*, I. 220 ff.; Hallays, A., *Les comices à Rome*, 67 f.; Maranca, *Il tribunato della plebe dalla lex Hortensia alla lex Cornelia*; Arndts, *Die lex Maenia de dote vom Jahr der Stadt Rom 568*, in *Zeitschr. f. Rechtsgesch.* vii (1868). 1–44; Voigt, M., *Die lex Maenia de dote vom Jahre 568 der Stadt*; *Die lex Fabia de plagiariis*, in *Verhdl. d. sächs. Gesellsch. d. Wiss.* xxxvii (1885). 319–345; Savigny, F. C. von, *Lex Cincia de donis et muneribus*, in *Vermischte Schriften*, i. 315–85; *Ueber die lex Voconia*, ibid. i. 407–46; *Schutz der Minderjährigen und die lex Plaetoria*, ibid. ii. 321–95; Garofalo, F. P., *Lex Cincia de donis et muneribus*, in *Bull. dell' ist. di diritt. Rom.* xv (1903). 310–2; Krüger, P. and Mommsen, Th., *Anecdoton Livianum*, in *Hermes*, iv (1870). 371–6; Babelon, E., *Monnaies de la république Rom.* i. 37–69; Hill, G. F., *Greek and Roman Coins*, 44 ff.; Haeberlin, E. J., *Del più antico sistema monetario presso i Romani*, V, in *Rivista Italiana numismatica e scienze affini*, xix (1906). 611–46; Cunz, O., *Polybius und sein Werk*; Pais, E., *L' elezione del pontefice massimo Romano per mezzo delle* XVII *tribù*; articles in Pauly-Wissowa, *Real-Encycl.* i. 576–80: L. Aimilius Paullus (Klebs); ii. 2728 f.: Baebius (idem); iii. 2738–55: M. Claudius Marcellus (Münzer); iv. 1112–38: Consul (Kübler). Grenfell, B. P., and Hunt, A. S., *Oxyrhynchus Papyri*, iv (1904). 90–116 for the newly discovered epitome of Livy, including text and commentary. The lost books xlviii–lv, covering the years 150–137, are represented. See also Kornemann, E., *Die neue Livius-Epitome aus Oxyrhynchus*, in *Beitr. zur alt. Gesch.* Beiheft ii (1904); Sanders, H. A., *The Oxyrhynchus Epitome of Livy*, in *Trans. of the Am. Philol. Assoc.* xxxvi (1905). 5–31, and a brief notice by Liebenam, W., in *Jahresb. d. Geschichtswiss.* xxvii (1904). 124 f.

[1] It is true that the Gracchan trouble opened his eyes to some of the defects in the constitution; but the aristocratic recovery after the tribunate of Tiberius (and perhaps after that of Gaius) confirmed his belief in the fundamental soundness and in the recuperative power of the state.

CHAPTER XVI

COMITIAL LEGISLATION

From the Gracchi to Sulla

134–82

I. *The Gracchi*

134–122

The work of agrarian reform, after the feeble attempt of Laelius,[1] was taken up in a more determined spirit by Ti. Sempronius Gracchus, who early in his tribunate, upon which he entered December 10, 134, promulgated his famous lex agraria. It was a repetition, with some modifications and additions, of those articles of the Licinian-Sextian statute which related to the same subject. The last instance of the prosecution of trespassers against the earlier law given in our imperfect records belongs to 193,[2] and it must still have been in force in 167 when Cato[3] recited its terms in his "Oration in behalf of the Rhodians." Probably about the time of Flaminius the agrarian provisions of this statute were renewed with the addition of articles, (a) providing that a specified proportion of free laborers should be employed on public lands held in possession, (b) requiring holders to take an oath to obey the law, (c) increasing the penalty for violations.[4]

Tiberius had matured his plan before entering office. Assisted

[1] P. 360 f.

[2] Livy xxxv. 10. 12: "Multos pecuarios damnarunt." In Livy xxxiv. 4. 9 Cato while speaking in defence of the Oppian law, in 195, is represented as mentioning the article which established the limit of five hundred iugera.

[3] *Orig.* v. 5.

[4] These are provisions of an agrarian law passed before the tribunate of Ti. Gracchus (App. *B. C.* i. 8. 33 f.) but not expressly referred to Licinius and Sextius in any ancient source. The first article seems to assume a greater development of slavery than could be true of the year 367, and the second would belong more naturally to a repetition than to the original enactment; p. 296, n. 4, 334, n. 1.

by experienced friends, among whom were P. Licinius Crassus, P. Mucius Scaevola, the most eminent jurist of his generation, consul designate for 133, and Appius Claudius Pulcher, his father-in-law, he expressed the articles of his rogation in the most careful terms and with especial regard for vested interests.[1] Its chief provisions were —

(1) No one shall hold more than five hundred iugera of the public land, excepting that in case the holder has sons he may occupy an additional two hundred and fifty iugera for each of two sons.[2]

(2) The occupier shall receive compensation for improvements on the lands which the law compels him to surrender.[3]

(3) The five hundred to one thousand iugera retained by the occupier shall be granted to him by the state in perpetuity and free from all dues.[4]

(4) The lands thus accruing to the state shall be divided among the needy[5] in lots, the maximal size of which seems to have been set at thirty iugera,[6] to be held not as private property but as permanent, heritable leaseholds inalienable and subject to a specified rent.[7] The Latins and Italians are to be included among the beneficiaries of this provision.[8]

[1] Plut. *Ti. Gracch.* 9.

[2] App. *B. C.* i. 9. 37 and 11. 46 states that an additional two hundred and fifty iugera were allowed for each son, and Livy, ep. lviii, sets the maximum at a thousand iugera. Combining the two sources, we reach the probable result given in the text; cf. also (Aurel. Vict.) *Vir. Ill.* 64. 3; Siculus Flacc. p. 136. 10 (CC is a corruption of ∞). See Herzog, *Röm. Staatsverf.* i. 450, n. 3; Greenidge, *Hist. of Rome*, i. 114; Mommsen, in *CIL.* i. p. 87.

[3] Plut. *Ti. Gracch.* 9; cf. Greenidge, ibid.

[4] App. *B. C.* i. 11. 46. It is not stated that these lots should become private property. Appian mentions this article as the only compensation for improvements on the lands surrendered. The fact that article 2 was withdrawn from the bill before it became a law may account for its omission from this source.

[5] Plut. *Ti. Gracch.* 9; App. *B. C.* i. 11.

[6] *CIL.* i. 200. 14: "*Sei quis* . . . agri iugra non amplius xxx possidebit habebitve." In all probability this specification came originally from the Sempronian law.

[7] Mommsen, in *CIL.* i. p. 88; Plut. *Ti. Gracch.* 9; App. *B. C.* i. 27. 121; Weber, *Röm. Agrargesch.* 151.

[8] This is a necessary deduction from a speech of Tiberius quoted by App. *B. C.* i. 9. 35; cf. 11. 43; Plut. *Ti. Gracch.* 9. The *Lex Agr.* of 111 (*CIL.* i. 200. 21) refers to assignments made by C. Gracchus to Latins and allies as compensation for public lands surrendered by them to the government for colonial purposes; cf. § 31.

(5) Certain specified parts of the public domain shall not be subject to assignment — the same parts which are afterward reserved from assignment by the agrarian law of 111:[1]

a. Land granted by law or by a senatorial decree to a colony, a municipium, or a Latin town, with the exception of any tracts of such land which this law may expressly order to be sold, assigned, or restored.[2] Public domain granted by a lex or a senatus consultum can be withdrawn by the same, but the modification of a treaty requires the consent of both parties.[3]

b. The trientabula — portions of public land granted by the government for a quit rent to its creditors as security for any part of a loan.[4]

c. The ager compascuus — public land on which a specified group of neighbors have a right to pasture free of charge ten large domestic animals — cattle, horses, mules, and asses — and a fixed number of small animals, unknown to us on account of a lacuna in the inscription but most probably fifty.[5] As the unit was doubtless the individual, much of the land of this description must have remained undivided.[6]

d. Public roads.[7]

e. Other portions of the public domain specifically desig-

Doubtless a similar provision was included in the statute of Tiberius. Although viritim assignments had hitherto benefited citizens only, Latins and Italians had been admitted to Latin colonies founded by Rome; Meyer, *Gesch. d. Gracch.* 91.

[1] Cf. *Lex Agr.* in *CIL.* i. 200. 6: "*Extra eum agrum, qui ager ex* lege plebive scito, quod C. Sempronius Ti. f. tr(ibunus) pl(ebei) rog(avit), exceptum cavitumque est nei divideretur." The exceptions numbered from a to g in the text above are taken from the agrarian law of 111. As these exceptions were made in the agrarian law of C. Gracchus, it is here assumed that they were made previously by Tiberius.

[2] *Lex Agr.* in *CIL.* i. 200. 31 f.; cf. Cic. *Leg. Agr.* i. 4. 10; ii. 22. 58 (land held similarly in Africa).

[3] Cf. Mommsen, in *CIL.* i. p. 90.

[4] In the earliest arrangement of the kind the part was one third, as the name indicates; Livy xxxi. 13. 9; *CIL.* i. 200. 31 f.; cf. Greenidge, *Hist. of Rome*, i. 113; Weber, *Röm. Agrargesch.* 149–51. The word is derived from trientare, as stabulum from stare; Mommsen, in *CIL.* i. p. 90.

[5] *CIL.* i. 200. 14; cf. 25 f. See Mommsen's comment, p. 91; Frontin. *Contr.* p. 15; Hygin. *Cond. Agr.* p. 116. 23; *Lim. Const.* p. 201. 12; Siculus Flacc. p. 157; Weber, *Röm. Agrargesch.* 120 f.

[6] Voigt, in *Abhdl. sächs. Gesellsch. d. Wiss.* x (1888). 229; Greenidge, *Hist. of Rome*, i. 113.

[7] *CIL.* ibid. 28.

nated as exempt from distribution, including the Campanian lands, which are leased out by the censors.[1]

f. Certain pasture lands let out to any who wish to feed their live stock thereon, who pay a tax (scriptura) for the privilege.[2]

(6) The distribution of the lands shall be effected by a standing magistracy elected annually by the tribes[3] — the triumviri agris dandis adsignandis.[4]

(7) As all available public land is to be utilized in the various ways described above, and as the holders of lands once public are to be guaranteed in their possession, further occupation of land is thereby precluded.[5]

Afterward as Tiberius found it impossible to reconcile the optimates to his measure, he withdrew the second article and proposed to eject illegal holders without compensation.[6] When the nobles induced Octavius, a colleague in the tribunate, to veto the bill, Tiberius had him deposed by a vote of the tribes, and then passed the agrarian law without further opposition, unauthorized however by the senate.[7] The triumviri elected to take charge of the work of distribution were the author of the law, his brother Gaius, and his father-in-law Appius Claudius Pulcher.[8] As the election of these persons was a violation of the Licinian and Aebutian plebiscites,[9] a dispensation was probably granted by vote of the people.[10] When the commission found itself hampered by legal inability to distinguish between

[1] *CIL.* 200. 1, 4, 6, 13, 22; cf. Cic. *Leg. Agr.* i. 7. 21; ii. 29. 81; *Att.* i. 19. 4; Mommsen, in *CIL.* i. p. 91; Greenidge, ibid. 112 f.

[2] *CIL.* ibid. 24–6; Voigt, ibid. 227. The classification of public land reserved from distribution by the agrarian law of 111 is that of Mommsen, in *CIL.* i. p. 90 f.

[3] Cic. *Leg. Agr.* ii. 12. 31; App. *B. C.* i. 9. 37; Livy, ep. lviii.

[4] They are so called in *Lex Lat. Bant.* 15, in *CIL.* i. 197; *Lex Rep.* 13, 16, 22, ibid. 198; *Lex Agr.* 16, ibid. 200.

[5] *Lex Agr.* in *CIL.* i. 200. 13 f., 17, 21–3; Cic. *Att.* i. 19. 4; Mommsen, in *CIL.* i. p. 87. Illegal occupations alone are thereafter mentioned; Cic. *Orat.* ii. 70. 284; App. *B. C.* i. 36. 162.

[6] Plut. *Ti. Gracch.* 10; cf. Greenidge, *Hist. of Rome*, i. 121; Strachan-Davidson's explanation (*Appian*, p. 13) seems to be incorrect.

[7] Livy, ep. lviii; Plut. *Ti. Gracch.* 10–3; App. *B. C.* i. 12 f.; Cic. *N. D.* i. 38. 106.

[8] Livy, ep. lviii; App. *B. C.* i. 13. 55; Vell. ii. 2. 3; Flor. ii. 2. 6.

[9] P. 347 f.

[10] Lange, *Röm. Alt.* iii. 13.

public and private land, Tiberius carried a second agrarian law which invested the triumviri with the necessary judicial power for determining what land was public and what private.[1] It was by virtue of this second enactment that the word iudicandis was introduced into the phrase descriptive of their functions — "iudicandis adsignandis" or "dandis adsignandis iudicandis."[2] In the year 129, probably at the time of the election to this office, Publius Scipio Aemilianus brought about the transfer of the judicial function to the consuls. Appian,[3] our sole authority for the latter act, speaks only of its discussion in the senate, implying that this body rather than the people passed the resolution. In that case the senate must have annulled the second agrarian law on the ground that it was illegally passed; for in no other way could it set aside a comitial statute.[4] Some land, already delimited, may still have been subject to distribution; but as the consuls avoided the disagreeable function received from the commissioners, the work of assignment came speedily to an end. The agrarian law of Ti. Gracchus fell thus into disuse till it was revived by his brother.[5]

The deposition of Octavius[6] requires especial consideration. In 136 the proconsular imperium had been abrogated, probably by a popular vote[7]; but no instance of the abrogation of an actual magistracy had thus far occurred. Most scholars consider the act unconstitutional.[8] It did indeed involve a sweeping departure from long-established custom; but in favor of its

[1] Livy, ep. lviii: "Promulgavit et aliam legem agrariam, qua sibi latius agrum patefaceret, ut iidem triumviri iudicarent, qua publicus ager, qua privatus esset."

[2] *CIL.* i. 552–5, 583; ix. 1024 f.

[3] *B. C.* i. 19. 78 f. The context indicates that in Appian's opinion the people had nothing to do with the measure.

[4] Lange, *Röm. Alt.* ii. 688 (cf. iii. 22) and Greenidge, *Hist. of Rome*, i. 158, suppose without evidence that Scipio effected his object by means of a law.

[5] P. 373 below. On the agrarian law of Ti. Gracchus, see further Long, *Rom. Rep.* i. 159–91; Herzog, *Röm. Staatsverf.* i. 445–52; Ihne, *Hist. of Rome*, iv. 382–400; Greenidge, *Hist. of Rome*, i. 110–28; Neumann, *Gesch. Roms*, i. 156–84.

[6] Livy, ep. lviii; Vell. ii. 2. 3: "Octavio collegae pro bono publico stanti imperium abrogavit"; Plut. *Ti. Gracch.* 12; App. *B. C.* i. 12; Cic. *Leg.* iii. 10. 24; Dio Cass. Frag. 83. 4.

[7] P. 360.

[8] Cf. Lange, *Röm. Alt.* iii. 12; Ihne, *Hist. of Rome*, iv. 80, 395; Long, *Rom. Rep.* i. 185 ff. Greenidge, *Hist. of Rome*, i. 125–7, and Pöhlmann, in *Sitzb. d. bayer. Akad.* 1907. 465 ff., contend for its legality.

legality may be urged the fact that nearly all the powers ever possessed by the assembly are known to have been acquired in the way in which Tiberius was attempting to establish for it the right to remove from office — by precedent rather than by law. A statute of the Twelve Tables declared that whatever the people voted last should be law and valid[1]; and through the ages preceding the Gracchi they had often applied this principle to the extension of their power at the expense of the senate and magistrates. They were sovereign; and if they chose to introduce the custom of deposing a magistrate whom they regarded as the betrayer of their dearest interests, they had the legal right. The wisdom of the proceeding may be questioned, but he who has followed the history of the assemblies thus far must regard the measure as merely one of the many steps by which the people advanced toward the realization of their sovereignty.

Tiberius attempted to apply the same principle to securing his election to the tribunate. His motive was not a purely selfish desire to save his life; it required no superhuman wisdom to discover that his downfall would mean the collapse of the great reform on which he had set his heart. The continued ascendancy of a popular champion necessarily involved the overthrow of the senatorial government. This idea, which he now clearly grasped, found expression in his new political platform, (1) to shorten the period of military service, (2) by means of a law of appeal to vest the supreme jurisdiction solely in the people, so as to deprive the senate of its extra-constitutional judicial power,[2] (3) to give the equites equal representation with the senators in the juries, or possibly as Dio Cassius states, to transfer the courts from the senate to the knights.[3] When the day of election came, his peasant supporters were busy with their harvests, and his platform did not strongly appeal to the city plebs, on whom he had chiefly to rely for votes. Had the people insisted, as they twice did in favor of Scipio,[4] they would have prevailed either with or without an act of dis-

[1] P. 233 f. [2] P. 255.

[3] Plut. *Ti. Gracch.* 16; Dio Cass. Frag. 83. 7. These sources are obscure and somewhat inconsistent. The proposals of Tiberius can, better than in any other way though not with absolute certainty, be inferred from the laws of his brother.

[4] P. 360.

pensation passed by the senate or by themselves[1]; but the weakness of his supporters rather than any illegality in the proceeding proved his ruin. To free the future reformer from this limitation, however, a rogation of C. Papirius Carbo, tribune of the plebs in 131, proposed that a tribune should be eligible to reëlection as many times as he chose to offer himself as a candidate. This rogation failed[2]; but before the tribunate of C. Gracchus, 123, "a certain law had already been enacted," as Appian[3] obscurely informs us, "that if a tribune should be wanting on the announcement (of the votes), the people might elect one from the whole body of citizens." The statute, which Appian has evidently failed to understand clearly, seems to have provided that if the returns showed the election of only nine tribunes from the candidates proposed, the people could proceed to elect a tenth from the whole body of citizens, including the existing tribunician college; or equivalently, if for the tenth place the tribes cast a majority of votes for one who was not a candidate, he would be considered legally elected.[4] The object was to enable the people to continue in office an especially popular tribune, and was therefore a notable stride in the direction of monarchy.

Papirius was more successful with his lex tabellaria, which extended the ballot to legislation, 131.[5] Trials of perduellio alone retained the oral vote. Doubtless this improvement greatly strengthened the rising popular party. A plebiscite

[1] P. 307 f. [2] Livy, ep. lix; Cic. *Amic.* 25. 96.

[3] *B. C.* i. 21. 90: Καὶ γάρ τις ἤδη νόμος κεκύρωτο εἰ δήμαρχος ἐνδέοι ταῖς παραγγελίαις, τὸν δῆμον ἐκ πάντων ἐπιλέγεσθαι. White translates, "For in cases where there was not a sufficient number of candidates, the law authorizes the people to choose from the whole number then in office"; and scholars usually suppose that in the first clause reference is to candidates. But if tribunus, the equivalent of δήμαρχος, stood in the law, it must have signified tribune, not candidate; and in that case παραγγελίαις, however Appian may have understood it, must be the equivalent of renuntiationibus, "announcements of votes."

[4] Cf. Strachan-Davidson, *Appian*, p. 23. It was under the second contingency that C. Gracchus was reëlected tribune without being a candidate; Plut. *C. Gracch.* 8. The third time, though as some averred he had a majority of votes, the presiding tribune dared reject them; ibid. 12; Meyer, *Gesch. d. Gracch.* 94, n. 3. Fowler's suggestion (*Eng. Hist. Rev.* xx. 217) that the law permitted but one reëlection of an individual is on the whole unlikely.

[5] Cic. *Leg.* iii. 16. 35; Herzog, *Röm. Staatsverf*, i. 461; Greenidge, *Hist. of Rome*, i. 163 f.

passed about 129, requiring a knight on entering the senate to sell his public horse, deprived the senators of their votes in the eighteen centuries, and completed the separation of the governing aristocracy from the commercial class begun by the Claudian statute of 219.[1]

At some unknown time before the tribunate of C. Gracchus a plebiscite of M. Junius modified the lex Calpurnia concerning extortion,[2] in what way we are not informed. The act is with a high degree of probability attributed to M. Junius Pennus, tribune of the plebs in 126.[3] If the Junian lex repetundarum was indeed his work, it could have been dictated by no sympathy with the unprivileged classes, for it was this Junius whose plebiscite ordered the expulsion of all aliens from Rome — a measure which Cicero condemns as inhuman.[4] The act last mentioned was the response of the senate and rabble to the effort of the more enlightened Romans to grant the citizenship to the Latins and Italians. The new idea was embodied in a rogation of M. Fulvius Flaccus, consul in 125, which offered the citizenship, or as an alternative the right of appeal, to the Italians, with the purpose of buying off their opposition to the Sempronian agrarian law; but the measure was so vehemently opposed in the senate that the author withdrew it.[5] The idea however lived in the minds of the reformers till it was finally realized.

Ten years after the tribunate of Ti. Gracchus his brother Gaius entered upon the same office. Since the beginning of the decennium the leaders of the popular party had made vari-

[1] The measure was being agitated at the time to which Cicero referred the dialogue *On the Republic*, iv. 2; cf. Q. Cic. *Petit. Cons.* 8. 33; Lange, *Röm. Alt.* ii. 657; iii. 25. On the Claudian law, see p. 335 above.

[2] P. 358.

[3] *Lex Acil. Rep.* 23, 74, in *CIL.* i. 198; Zumpt, in *Abhdl. d. Akad. zu Berlin*, 1845. 1–70, 475–515; Lange, *Röm. Alt.* ii. 664; iii. 26; Greenidge, *Leg. Proced.* 420; *Hist. of Rome*, i. 135, 211. The Latin Lex Bantina (*CIL.* i. 197), identified by some with the Lex Iunia, seems rather to belong to the tribunate of C. Gracchus; p. 379.

[4] Cic. *Off.* iii. 11. 47; *Brut.* 28. 109; Fest. 286. 10; Long, *Rom. Rep.* i. 237 f.; Greenidge, *Hist. of Rome*, i. 166 f.

[5] App. *B. C.*, i. 21, 34. 152; Val. Max. ix. 5. 1; Ihne, *Hist. of Rome*, iv. 418–21; Long, ibid. 241; Herzog, *Röm. Staatsverf.* i. 462; Greenidge, ibid. 167 ff.; Meyer, *Gesch. d. Gracch.* 93; Fowler, in *Eng. Hist. Rev.* xx. 422.

ous proposals but had accomplished little. The agrarian law was still nominally in force, though its execution was effectually blocked. The plan of extending the franchise had found its most bitter opponents in the men of the street, on whom the tribunes had chiefly to depend. The ballot in legislation, the possibility of continuous reëlection to the tribunate, and the increase of discontent with the plutocracy were the only gains. Extraordinary progress was now to be made under the leadership of a great creative statesman. The chronological succession of his comitial enactments cannot be determined with absolute certainty. We do not in every instance know whether a given proposal was carried in his first or second year. This much, however, is clear, that most of his measures belong to 123 and to the early part of 122. The execution of the laws, including the seventy days' journey to Carthage,[1] consumed much of the second year, and after his defeat for the third term — about July, 122 — he carried no more plebiscites.[2] Among his first thoughts was that of strengthening the legality of the deposition of Octavius[3] by a rogation which provided that a person so deposed should thereby be debarred forever from office. He probably meant it more as an enunciation of a principle than as a legislative project. The measure was never offered to vote, but was withdrawn, we are told, at the request of his mother.[4] Far more serious, and of lasting importance, was his lex de provocatione, which, carrying into effect the idea of his brother,[5] forbade the establishment of a special court or the placing of the state under martial law without an act of the people.[6] Further judicial legislation was postponed in the interest of more pressing matters.

[1] In March, April, and May, according to Kornemann, *Gesch. d. Gracch.* 44.

[2] On the order of his enactments, see Lange, *Röm. Alt.* iii. 38; Greenidge, *Hist. of Rome*, i. 210; Herzog, *Röm. Staatsverf.* i. 466; Meyer, *Gesch. d. Gracch.* 95, n. 4; Kornemann, *Gesch. d. Gracch.* 42 ff.; Fowler, in *Eng. Hist. Rev.* xx. (1905). 216 ff. Meyer calls attention to the fact that while Appian, *B.C.* i. 21 f., states the enactments in substantially correct order, he wrongly identifies the date of reëlection — midsummer 123 — with the date of entrance upon his second term — December 10, 123 — in this way pushing forward into the second year a large group of enactments which belong to the latter part of his first term.

[3] P. 367.

[4] Plut. *C. Gracch.* 4; Diod. xxxv. 25, 2; Fest. ep. 23 (abacti); Lange, *Röm. Alt.* ii. 655; iii. 30 f.; Greenidge, *Hist. of Rome*, i. 202.

[5] P. 368.

[6] P. 255 f. For the comitial interdict against Popillius, see p. 256.

While colonization and the assignment of land individually to citizens, which Gaius planned on an extensive scale, as will soon be noticed, were to provide for the agricultural population at the expense of the state, and while the nobles and knights continued to reap an unfailing harvest of wealth in the administration of the provinces, the democratic reformer could think it only just and expedient to subsidize the populace of the capital. The artificial growth of Rome as a political centre, with no sound economic basis but with a most unfavorable geographical situation, rendered the problem of living difficult for the masses even in time of prosperity; and recently circumstances had so diminished the grain supply that relief from the government seemed the only resource against threatening famine.[1] Before the time of the Gracchi on occasions of especial scarcity or of especial plenty the state had sold grain at a reduced rate; and the aediles, we know not how often, had made similar reductions at their own expense.[2] There can be no doubt, too, that individual nobles in a private capacity often distributed free or cheap grain among the poor to secure their support in elections. Attached by such means to the nobles and the senate, the rabble had been in the main conservative. There was a certain degree of justice in giving the populace a share in the profits of empire and some wisdom in substituting system for the existing irregularity. A political result, we may also say aim, of the frumentarian plebiscite of Gaius was to disattach the city populace from its conservative moorings and to enlist it in the service of reform. His measure, the first frumentarian law in Roman history, provided for the monthly sale to every citizen who applied for it — practically to those only who resided in or near Rome — of a fixed number of modii of wheat at six and a third asses a modius,[3] which was probably about half the average market price. The law won for him the good will of the populace,[4] but his opponents complained that it depleted the treasury and excited the

[1] Cf. Greenidge, *Hist. of Rome*, i. 204 f.; Fowler, *Eng. Hist. Rev.* xx. 224.

[2] Humbert, in Daremberg et Saglio, *Dict.* ii. 1346. For examples, see Marquardt, *Röm. Staatsv.* ii. 114, and especially, Oliver, *Roman Economic Conditions*, 61 ff.

[3] Livy, ep. lx; App. *B. C.* i. 21. 89; Schol. Bob. 303; Vell. ii. 6. 3; Plut. *C. Gracch.* 5.

[4] App. ibid. § 90; Diod. xxxv. 25; Cic. *Sest.* 48. 103.

mob to seditions.[1] It set an example for further reductions at the expense of the state. Hence notwithstanding some good features the effect of the law was pernicious, as it tended to increase the number of idlers, to make the populace improvident, and to encourage demagogism. It must be said, on the other hand, that had Gaius lived to carry out his wide scheme of colonization, he would have so relieved the capital of its semi-pauper population as to render frumentations unnecessary, whereupon the law would naturally have been repealed.[2]

After providing in the frumentarian act an expedient which, we may believe, he looked upon as temporary, he resumed the work of construction[3] by reviving his brother's agrarian law.[4] The continuance of the assignations as long as there remained any public land that could be distributed was a most essential element of his plan. Among the articles retained were those which subjected the holders of assigned lots to a tax[5] and exempted from distribution the Campanian territory not set apart for his colony at Capua,[6] as well as various other lands excepted both by the agrarian law of Tiberius and by that of 111.[7] Doubtless it also reinvested the three commissioners with judicial power, without which they could accomplish nothing. Through this agrarian law, or possibly through a subsequent lex viaria, the triumviri were empowered to build roads for the accommodation of the new peasantry.[8] Though introducing no new principle,[9] his lex agraria was not a simple reaffirmation of his brother's law with amendments and additions; but "a comprehensive statute, so completely covering the ground of the earlier Sempronian law that later legislation cites the law of Gaius, not

[1] Cic. *Off.* ii. 21. 72; *Tusc.* iii. 20. 48; Diod. ibid; Oros. v. 12. 4; cf. Long, *Rom. Rep.* i. 261–3; Greenidge, *Hist. of Rome*, i. 203–7.

[2] The view here offered was suggested in Botsford, *History of Rome* (1901), 156. It is presented in greater detail by Fowler, in *Eng. Hist. Rev.* xx (1905). 221 ff.

[3] Begun by his lex de provocatione; p. 371.

[4] Placed before the frumentarian law by Lange, *Röm. Alt.* iii. 31. Meyer, *Gesch. d. Gracch.* 95, n. 4, and Kornemann, *Gesch. d. Gracch.* 43, hold the view represented above in the text.

[5] Plut. *C. Gracch.* 9.

[6] *CIL.* i. 200. 6, 22; cf. Lange, *Röm. Alt.* iii. 32.

[7] P. 364 f., 386.

[8] App. *B. C.* i. 23. 98; Plut. *C. Gracch.* 6 f.; cf. Voigt, in *Verhdl. sächs. Gesellsch. d. Wiss.* xxiv (1872). 68 ff.

[9] Livy, ep. lx; Mommsen, in *CIL.* i. p. 88.

that of Tiberius Gracchus, as the authority for the regulations which had revolutionized the tenure of the public land."[1]

These measures were passed before the tribunician elections of the year,[2] which took place as usual in midsummer.[3] It was his frumentarian law, together with the hope aroused by the long array of promulgated measures, which secured his reëlection. Soon afterward, though still in 123, he brought before the comitia a rogation concerning the qualification of iudices. As the quaestiones extraordinariae from the earliest times were made up of senators, it was natural that the standing courts also from the time of their institution should be similarly composed.[4] Under such conditions the judical authority afforded no efficient check upon maladministration; and this immunity from the law, together with the temptations to the misuse of power especially in provincial commands, tended in the course of generations to make of the senate, with individual exceptions, a class of grand criminals. To remedy this evil and at the same time to remove from the senate the strongest foundation of its political power,[5] Ti. Sempronius Gracchus had proposed his rogatio iudiciaria either for transferring the courts entirely to the knights, or more probably for making up the juries of an equal number of senators and knights.[6] It failed to become a law; but Gaius now took up the matter, and after experimenting unsuccessfully with one or two projects,[7] he finally, 122, carried a

[1] Greenidge, *Hist. of Rome*, i. 209; cf. *CIL.* i. 200, 1, 3, 4, 6, 22. Dio Cassius, Frag. 84. 2, intimates that after the death of Scipio the distribution of the public land was renewed with energy. Reference must accordingly be to the operation of the law of Gaius.

[2] Cf. App. *B. C.* i. 21 f.

[3] App. *B. C.* i. 14. 58.

[4] P. 358.

[5] P. 345.

[6] P. 368. The measure is referred to as a lex iudiciaria by Macrob. *Sat.* iii. 14. 6.

[7] The epitomator of Livy, lx, supposes that Gaius offered and actually carried a measure for adding six hundred knights to the senate with the understanding that the jurors were to be drawn from that body thus enlarged; cf. Mommsen, *Röm. Staatsr.* iii. 530, n. 1. Such an act, however, could not have been termed a lex iudiciaria, as it would have been concerned simply with the composition of the senate. Everything is opposed to the assumption that the bill in this form passed or at least that it was put into effect. Plutarch, *C. Gracch.* 5 f., seems to signify that his law provided for an album of six hundred jurors, one half to be drawn from the senate, the rest from the knights. It is by no means necessary, with Fowler, in *Eng. Hist. Rev.* xx (1905). 426, n. 16, to interpret the expression ὁ δὲ τριακοσίους τῶν ἱππέων προσκατέλεξεν αὐτοῖς οὖσι τριακοσίοις, καὶ τὰς κρίσεις κοινὰς τῶν ἑξακοσίων ἐποίησε (cf. *Ag. et Cleom. et Gracch.*

plebiscite which substituted knights for senators in the alba iudicum,[1] from which not only standing courts but also special commissions were to be filled.[2] It is uncertain whether mention was made of equites or whether the result was reached merely by exclusion and definition. There can be no doubt that the qualifications were identical with those described in the extant lex repetundarum,[3] attributed by scholars to M'. Acilius Glabrio, a colleague of Gaius, and adopted accordingly soon after the Sempronian judiciary law. The terms of the Acilian statute excluded tribunes of the plebs, quaestors, tresviri capitales, military tribunes of the first four legions, tresviri for assigning lands, persons who had fought in the arena for pay or had been condemned by a quaestio or by the people. It excluded further all under thirty or over sixty years of age, and all who had their domicile more than a mile from Rome, the fathers, brothers, and sons of those who held the offices above enumerated, senators, and their fathers, brothers and sons, as well as persons living beyond the sea. A part of the statute missing from the inscription may have contained a minimal property qualification, which could have been no other than four hundred thousand sesterces; or it may have restricted jury service to those who "possess a public horse."[4] According to Plutarch Gaius was allowed the privilege of selecting the jurors. Had he remained in power and continued in this function, he doubtless could have

Comp. 2) as "adding three hundred equites to the senate to form the body of iudices." These sources have confused the projects with the law as actually passed; cf. Strachan-Davidson, *Appian*, p. 23.

[1] App. *B. C.* i. 22. 92; Vell. ii. 6. 3; 32. 3; Varro, in Non. Marc. 454; Tac. *Ann.* xii. 60; Pseud. Ascon. 103, 145; Flor. ii. 1. 6; 5. 3 (iii. 13. 17); Diod. xxxv. 25; Plut. *C. Gracch.* 5; Livy, ep. lx; cf. Lange, *Röm. Alt.* ii. 668; iii. 38–40; Herzog, *Röm. Staatsverf.* i. 466 f.; Long, *Rom. Rep.* i. 263–9; Greenidge, *Leg. Proced.* 434; *Hist. of Rome*, i. 212–7; Ihne, *Hist. of Rome*, iv. 457–64; Madvig, *Röm. Staat.* ii. 219–21.

[2] This is true at least of the extraordinary quaestio established by the Mamilian law of 110; Cic. *Brut.* 34. 128; cf. 33. 127; Schol. Bob. 311; Greenidge, *Leg. Proced.* 381 f., 435.

[3] *CIL.* i. 198.

[4] *CIL.* i. 198. 16. There was under the republic a census qualification for the knights who acted as iudices (Cic. *Phil.* i. 8. 20), though we have no authority that the limit of four hundred thousand sesterces existed before the principate. Originally Mommsen supplied the lacuna with a statement of the money qualification as here given; but afterward, changing his mind, he filled the gap with "equum publicum habebit habuerit."

compelled the courts of his choosing to do justice. But the privilege seems to have been restricted to the first list; thereafter, as provided by the lex repetundarum of Acilius the praetor qui inter peregrinos ius dicit was to attend to the matter.[1] The relation between the Sempronian lex iudiciaria and the lex Acilia repetundarum has not been precisely determined.[2] If the Sempronian statute preceded the Acilian,[3] as is not unlikely, it was the intention of Gaius to pass a general law regarding the qualifications and mode of appointment of jurors, to be superseded in large part by a succession of laws, which dealing with individual courts, should regulate the qualification and appointment of their several juries as well as the procedure and the penalties. This policy indicates a conviction that he could give the reformed judicial system greater stability by making the separate laws here referred to entirely independent of his original lex iudiciaria.[4]

The lex Acilia, described above as a plebiscite of M'. Acilius Glabrio, colleague of C. Gracchus in 122,[5] took the place of the lex Iunia of 126,[6] and is to be identified with a lex repetundarum extensive fragments of which are preserved in an inscription.[7] Whereas earlier laws on the subject rendered governors of provinces, and perhaps administrative officers in

[1] An article of the lex Acilia provides that within ten days after the enactment of this statute the said praetor shall choose the four hundred and fifty persons from whom the jurors of that court are to be drawn; thereafter the revision is to be annual; *CIL.* i. 198. 12, 14.

[2] Strachan-Davidson, *Appian*, p. 23, followed by Fowler, in *Eng. Hist. Rev.* xx. 429, identifies the two — on untenable ground, for the reliable sources speak distinctly of a Sempronian law and an Acilian law.

[3] Mommsen, *Röm. Staatsr.* iii. 531, n. 1, preferably regards the Sempronian as the later; but in that case the transfer would have been achieved in substance by the Acilian statute — a view which is contradicted by the sources.

[4] This idea would explain the fact that the extant fragments of the lex Acilia contain no reference to a Sempronian lex iudiciaria.

[5] Cic. *Verr.* i. 17. 51 f.; II. i. 9. 26; *Brut.* 68. 239; Pseud. Ascon. 149, 165.

[6] P. 370.

[7] *CIL.* i. 198. Reference to the IIIviri of the Sempronian agrarian law (§ 13, 16, 22) proves it to belong to 133–119, while the fact that it does not admit senators among the jurors requires it to follow the judiciary law of C. Gracchus; and more particularly, the implication that at the time of its enactment the lex Rubria (p. 383 below) was in force places it between 123 and 121; Mommsen, in *CIL.* i. p. 55; Ruggiero, *Diz. Ep.* i. 41. In general on the law, see Rudorff, *Ad legem Aciliam;* Zumpt, in *Abhdl. d. Akad. zu Berlin*, 1845. 1–70, 475–515; *Röm. Criminalr.* i. 99 ff.; Huschke, in *Zeitschr. f. Rechtsgesch.* v (1866). 46-84; Hesky, in *Wiener*

Italy, alone liable to punishment, the Acilian statute includes magistrates and senators and the sons of both as well as the holders of promagisterial imperium.[1] The crime consists in taking in any one year from those whom the law is designed to protect — from the allies, Latins, provincials, and exterior nations under the sway or in the friendship of the Roman people[2] — by gift, seizure, compulsion, or other illegal means money or property exceeding a specified sum, which a lacuna in the inscription leaves unknown, but which is supposed to be four thousand sesterces.[3] Holders of magistracies and imperia cannot be brought to trial for the crime till after the expiration of their terms,[4] on the general principle which exempts from prosecution those who are engaged in the service of the state.[5] The praetor qui inter peregrinos ius dicit within ten days after the passage of the statute, and in future within ten days after entering upon his office, is to choose for this court four hundred and fifty persons with the qualifications for jury service described above in connection with the Sempronian judiciary law. From this group the accused is to reject under oath his kinsmen within a specified degree and his sodales. The accuser is to draw from the remainder a hundred persons, taking oath that he has chosen no kinsman within a specified degree or sodalis. The accused rejects fifty of the hundred, and the remaining fifty constitute the jury for trying the case.[6] The rules of procedure in the trial and the amount of

Studien, xxv (1903). 272–87; Brassloff, ibid. xxvi. 106–17; Lange, *Röm. Alt.* ii. 664; iii. 40; Mommsen, *Röm. Staatsr.* iii. 642; *Röm. Strafr.* 708 f.; Greenidge, *Leg. Proced.* 420; *Hist. of Rome*, i. 214, n. 2; Ruggiero, ibid. 41–4; Klebs, in Pauly-Wissowa, *Real-Encycl.* i. 256.

[1] *Lex Rep.* 2 f.; cf. 8 f. [2] *Lex Rep.* 1.

[3] Vell. ii. 8. 1; cf. Cic. *Verr.* iii. 80. 184; Ruggiero, *Diz. Ep.* i. 42.

[4] *Lex Rep.* 8 f.

[5] The principle was expressed in an article of the lex Memmia de incestu of 111 (Val. Max. iii. 7. 9), and probably in every law for the establishment of a court. It was used throughout the history of the republic; cf. Livy x. 37. 7; 46. 16 (year 293); p. 289 above; Suet. *Caes.* 23 (59); Dio Cass. xxxix. 7. 3 (57).

In this connection mention may be made of the lex Hostilia, which allowed actions for theft to be brought in behalf of persons absent in the service of the state or in captivity or in wardship; Just. *Inst.* iv. 10. The date is unknown, though Voigt, *Röm. Rechtsgesch.* i. 282, n. 14, inclines to assign it to 209 or 207.

[6] *Lex Rep.* 19–26; Mommsen, *Röm. Strafr.* 216 f. Ruggiero, ibid. 43, is obviously wrong.

liability of the accused in the event of conviction are given. The accuser, if an alien, is granted as a reward for a successful prosecution the Roman citizenship for himself and his born sons and grandsons. If he is a Latin and does not want the citizenship, he is given instead the right of appeal.[1] Probably the law contained provisions for the punishment of corruption in the patrons of the accusers and in the praetor and jurors.[2]

It is certain that Gaius carried a law also for reconstituting the quaestio inter sicarios et veneficos,[3] which had originally been established shortly before 141.[4] The Sempronian law on this subject contained a provision for the punishment of bribery or conspiracy committed in trials of the kind. The article referred to included the words "Ne quis iudicio circumveniretur,"[5] a principle repeated as "Qui coisset, quo quis condemnaretur"[6] in the corresponding article of the Cornelian law which superseded the Sempronian. There was no quaestio for dealing especially with judicial corruption and conspiracy, but the accused was brought to trial before the very court in relation to which his crime was alleged to have been committed.[7] The provision was directed against the accuser, against magistrates and senators who presided over such courts, and presumably against equestrian jurors who accepted bribes.[8]

[1] *Lex Rep.* 76–8; cf. 83–5.

[2] § 28 states that money within a specified limit might legally be received — perhaps by the patron of the accuser — from which we may infer that the law defined precisely what was permitted and what forbidden all persons participating in the trial; cf. Brassloff, in *Wiener Studien*, xxvi. 109 f.

[3] Cic. *Cluent.* 56. 154: "Illi (senatus) non hoc recusabant, ne ea lege accusarentur, qua nunc Habitus accusatur, quae tum erat Sempronia, nunc est Cornelia" ("They did not object to being accused under that law under which Habitus is now being tried, which was then the Sempronian but is now the Cornelian statute"). The trial was before the quaestio veneficis under the Cornelian law which constituted this court and which is described as essentially identical with a Sempronian law. *CIL.* i. p. 200. xxxiii: ("C. Claud. Ap. F. C. N. Pulcher) . . . IUDEX. Q. VENEFICIS," aedile 99, praetor 95, consul 92, corroborates the existence of such a court before Sulla. For other proofs, see Lengle, *Sull. Verf.* 36 ff.; cf. Lange, *Röm. Alt.* ii. 664.

[4] P. 255, n. 1 (4), 358. [5] Cic. *Cluent.* 55. 151. [6] Ibid. 52. 144.

[7] In 66 Cluentius Habitus was brought to trial before the quaestio inter sicarios et veneficos on the charge (1) of having corrupted the jurors in an earlier trial of the kind, (2) of poisoning; Cic. *Cluent.;* cf. Münzer, in Pauly-Wissowa, *Real-Encycl.* iv. 12.

[8] The whole tenor of Cicero's *Pro Cluentio* is to the effect that the knights were not bound by the provision against bribery. He had a strong motive, however, for bringing into prominence the article which provided for the punishment of mag-

We have in an inscription the concluding articles of a criminal law[1] of this period. It is on a bronze tablet found on the site of the ancient Italian city Bantia, and is called the Latin Lex Bantina to distinguish it from another lex in Oscan on the opposite face.[2] A reference to the triumviri agris dandis adsignandis, who seem to have been those elected under the Sempronian agrarian law, places the document between 133 and 118. It is concerned with a quaestio.[3] An attempt has been made to identify it with the lex Iunia repetundarum and to assign it accordingly to 126.[4] The circumstance, however, that it was passed without the authorization of the senate, and that its whole spirit is anti-senatorial, would lead us rather to the conclusion that it was the work of C. Gracchus at the time of his most bitter struggle with the optimates yet before he had lost control of the comitia. The fragment contains no more than the sanctio — provisions for enforcement of the statute. The beginning of the first extant article is lost, but it must have described the class of offenders to which the article applies, and the nature of the offence. It speaks merely of disabilities imposed on the offender, among which are the following: he must not address the senate or vote in a public trial (poplico ioudicio) or in comitia or receive or give testimony in court or wear the praetexta and soleae in public or be chosen into the senate or remain in it if already a member. The second article provides that if a tribune of the plebs, a quaestor, a triumvir capitalis, a triumvir for assigning

istrates and senators, and for suppressing the one, if there was one, concerning the punishment of equites; and this suppression was rendered easy by the fact that the Cornelian law then in force mentioned senatorial jurors only. Appian, *B. C.* i. 22. 97 (cf. 35. 158, 161), assumes that under the Sempronian law there were trials for the bribery of jurors, rendered useless, however, and finally done away with by the conspiracy and violence of the knights; cf. Lengle, *Sull. Verf.* 18 f. This interpretation of the known facts seems preferable to the view of Cicero, which, however, is accepted by most scholars; cf. Mommsen, *Röm. Strafr.* 635; Greenidge, *Leg. Proced.* 421; *Hist. of Rome*, i. 216 f.

[1] *CIL.* i. 197; Ritschl, *Prisc. lat. mon. epigr. tab.* xix.

[2] Bruns, *Font. Iur.* p. 48–53; Girard, *Textes*, p. 26–9.

[3] As indicated by the "Ioudex, quei ex hace lege plebeive scito factus erit"; § 2.

[4] Karlowa, *Röm. Rechtsgesch.* i. 431. Kirchhoff, *Stadtrecht von Bantia*, 90–7, regards it as a part of a judiciary law. Mommsen, in *CIL.* i. p. 46 f., connects it with a treaty between Rome and Bantia. See also Krüger-Brissaud, *Hist. d. source d. droit Rom.* 94.

lands, or a iudex appointed under the law itself, or a senator shall with knowledge and malice prepense violate the law or hinder its operation, he shall be liable to a fine, the amount of which a lacuna in the text leaves unknown. The third article provides that a consul, praetor, aedile, tribune of the plebs, quaestor, triumvir capitalis, or triumvir for the assignment of lands now in office shall, within the next five days after ascertaining that the law has been enacted, swear in the manner described below: also that the dictator, consul, praetor, master of horse, censor, aedile, and other officials as above enumerated, and the iudex appointed under this law shall in future take the oath within five days after entering upon their magistracies or imperia. They shall give oath to the urban quaestor publicly in front of the temple of Castor, swearing by Jupiter and the di Penates that they will do as the law requires and will not with knowledge and malice prepense violate the law or by intercession or otherwise hinder its administration. He who fails to swear shall not be candidate for a magistracy or imperium, or manage or retain either, or address the senate or be chosen into it; and the quaestor shall keep a list of those who have taken the oath. The fourth article provides that whoever is or shall be a senator, or shall have the right of addressing the senate after this law has been passed, shall within the next ten days after ascertaining the fact of its enactment take an oath like that described in article 3. The penalty for failure to swear is not mentioned in the extant fragment, but must at the mildest have been expulsion from the senate.

Closely connected with the transfer of the iudicia from the senators to the knights is the statute of Gaius concerning the taxation of Asia. It ordered the censors to let out the taxes of this province to the highest bidders; and it limited the right of the senate to lessen the sum agreed upon.[1] Under such an arrangement, however, no sufficient guarantee could be provided for the security of the provincials from publican exac-

[1] Cic. *Verr.* iii. 6. 12; *Att.* i. 17. 9; Schol. Bob. 259; Vell. ii. 6. 3; Gell. xi. 10; App. *B. C.* v. 4. 17 f.; Fronto, *Ad Verum*, p. 125; Lange, *Röm. Alt.* ii. 674 f.; iii. 34; Herzog, *Röm. Staatsverf.* i. 468 f.; Greenidge, *Hist. of Rome*, i. 217–21. Hitherto the senate had exercised unrestricted power in granting such remissions; Polyb. vi. 17. 5.

tions.[1] The political result of this legislation in favor of the knights was to invest them not only with an important share in the adminstration, but through the courts with a superiority even over the senate.[2] The opposition of the poorer class to the aristocracy could never be otherwise than uncertain and fitful; but the knights with their immense wealth and their efficient organization were to be henceforth an ever present rival of the senate. The author of the law had given the state a double head,[3] which was to prove the source of civil discord; or nearly in his own words, he had thrust into the body of the senate a sword which nothing could withdraw.[4] For a few months their benefactor may have cherished the delusion that he could depend upon their grateful support; he lived to discover that they cared not for him or his reforms but only for their immediate interests. In his work of construction the statesman found them slightly more serviceable than the proletariate.

The right which the senate had hitherto possessed of assigning the provinces to the magistrates and promagistrates according to its pleasure gave a great opportunity for favoritism and partisanship; it could thwart the will of the people by assigning a popular consul to an insignificant province. To deprive the senate of a power which could be so easily perverted to wrong use, C. Gracchus proposed and carried an act which ordered the senate before the election to name the provinces that were to be consular.[5] An article forbade tribunician inter-

[1] App. *B. C.* v. 4. 19; Diod. xxxv. 25. [2] App. *B. C.* i. 22. 94–7.

[3] Varro, in Non. Marc. 454; Flor. ii. 5. 3 (iii. 17).

[4] Diod. xxxvii. 9; cf. Cic. *Leg.* iii. 9. 20. As a substitute for his law concerning the taxation of Asia his opponents vainly offered the rogatio Aufeia, probably pretorian, on the same subject; Gell. xi. 10; Lange, *Röm. Alt.* ii. 675; iii. 35.

[5] Cic. *Prov. Cons.* 2. 3; *Balb.* 27. 61; *Dom.* 9. 24; *Fam.* i. 7. 10; Sall. *Iug.* 27; Lange, *Röm. Alt.* iii. 41; Herzog, *Röm. Staatsverf.* i. 470. Before the enactment of this law it was possible for the people to grant a province to whomsoever it pleased, whether magistrate or private person. A lex of 131, probably tribunician, had given the province of Asia to P. Licinius Crassus, consul; Livy, ep. lix; Cic. *Phil.* xi. 8. 18. The Sempronian law did not affect their right. In 107 a plebiscite of C. Manlius granted Numidia, with the conduct of the Jugurthine war, to C. Marius, consul; Sall. *Iug.* 73; Gell. vii. 11. 2; *CIL.* i. p. 290 f. On the Sulpician law for granting the conduct of the Mithridatic war to Marius, then a private citizen, see p. 404.

cession against such action of the senate.[1] Far from improving the administration, however, this statute tended to foster that routine which was one of the most marked defects of oligarchic rule.[2]

As under the government of the nobility military affairs were in the hands of the magistrates and senate, this field was closed to comitial legislation.[3] One of the most notable indications of growing democracy was the project of Ti. Gracchus, 133, for shortening the period of service. It was not brought to vote;[4] but his brother Gaius succeeded in passing a plebiscite, 123, which ordered that the state should bear the cost of clothing soldiers, and forbade the enlistment of boys before the close of their seventeenth year.[5] The pay of the soldiers, which since the war with Hannibal had remained five and a third asses a day, had under new conditions become wholly inadequate; and certainly insistence on the legal age limitation was prudent as well as humane. There is no ground, then, for imagining with Diodorus[6] that in this salutary measure Gaius was catering for the support of the soldiers by inciting them to disobedience and lawlessness.

His greatest constructive work he aimed to achieve through colonization and through the extension of the franchise. His colonial law, 123, proposed to establish many settlements in Italy,[7] two of which at least should be made up of men of the best character, not the neediest but traders and workmen of moderate means.[8] The two actually founded were Scolacium and Neptunia,[9] both in situations favorable for commerce.

[1] Cic. *Prov. Cons.* 7. 17.

[2] Cf. Greenidge, *Hist. of Rome*, i. 222 f.

[3] Lange, *Röm. Alt.* ii. 672.

[4] P. 368.

[5] Plut. *C. Gracch.* 5; cf. Livy xxv. 5. 5–8. In speaking on the rogation of Cn. Marcius Censorinus, a proposal not otherwise known, Gaius is said to have remarked: "Si vobis probati essent homines adulescentes, tamen necessario vobis tribuni militares veteres faciundi essent"; Charis. 208. The new epitome of Livy proves that the military question was more prominently before the public at this time than has hitherto been supposed.

[6] XXXV. 25. For the Gracchi in general Diodorus draws from Posidonius, an exceedingly hostile source.

[7] Livy lx; App. *B. C.* i. 23 f.; Plut. *C. Gracch.* 6, 8 f.; (Aurel. Vict.) *Vir. Ill.* 65. 3. The date is established by Vell. i. 15. 4; Oros. v. 12. 1; cf. Meyer, *Gesch, d. Gracch.* 95, n. 4; Mommsen, in *CIL.* p. 87, 96.

[8] Plut. *C. Gracch.* 9; cf. Greenidge, *Hist. of Rome*, i. 224 f.

[9] Vell. i. 15. 4; (Aurel. Vict.) *Vir. Ill.* 65. 3; cf. Kornemann, in Pauly-Wissowa,

Several other settlements in Italy are attributed to his colonial or agrarian statute.[1] As his colonies were exclusively citizen,[2] if any aliens took part, they must by virtue of the colonial law have obtained the Roman rights. The statute of his colleague Rubrius the same year (123) provided for the founding of Junonia on the site of Carthage.[3] But the most liberal and statesmanlike measure was reserved for his second tribunate, 122. It was a proposal to grant full citizenship to the Latins and the ius Latii to the remaining allies.[4] The rejection of the bill by a popular vote proved the leader far too liberal and too progressive for his supporters. Deceived by the spurious proposals of M. Livius Drusus,[5] a colleague of Gaius, for the founding of twelve colonies, the members of which were to hold their lots by fee simple and consequently exempt from rents, and for depriving the Roman magistrates of the right to inflict corporal punishment on Latins even when in military service under their commands,[6] the populace, readily accepting the new propo-

Real-Encycl. iv. 522; Ferrero, *Rome*, i. 55. His plan to colonize Capua (Plut. *C. Gracch.* 8) was not carried out.

[1] The lex Sempronia or Graccana, mentioned in the *Liber Coloniarum*, in *Gromatici* (Lachmann), p. 229, 233, 237, 238; cf. p. 216, 219, 228, 255; cf. Greenidge, *Hist. of Rome*, i. 224, n. 2.

[2] This fact is deduced from the literary references to the subject and from the terms of the agrarian law of 111; *CIL.* i. 200. 5, 13; cf. Mommsen's comment, p. 90. The same principle holds for any other colonies founded in Italy between 133 and 111.

[3] *Lex Acil.*, in *CIL.* i. 198. 22; *Lex Agr.*, *CIL.* i. 200. 59; Vell. i. 15. 4; ii. 7. 8; Plut. *C. Gracch.* 10 f.; App. *B. C.* i. 24; *Pun.* 136; Livy, ep. lx; Fronto, *Ad Verum*, ii. p. 125; Sol. 28. For the date, see Vell. i. 15. 4; Oros. v. 12. 1; Eutrop. iv. 21.

[4] Vell. ii. 6. 2; Plut. *C. Gracch.* 5, 8 f.; App. *B. C.* i. 23. 99; 34. 153; cf. Herzog, *Röm. Staatsverf.* i. 474 f.; Greenidge, *Hist. of Rome*, 233–7. About the end of 123 or the beginning of 122 Gaius had proposed to give the Latins equal suffrage with the Romans; Plut. ibid. 8 f.: Kornemann, *Gesch. d. Gracch.* 45. The promulgation of this earlier rogation must have preceded that of the Livian bills.

The bill (or possibly bills) which included the Italians among the recipients of the citizenship could have been offered only between his return from Carthage and the elections of midsummer, 122; Kornemann, ibid. 51; Fowler, in *Eng. Hist. Rev.* xx. 425.

[5] Cf. Fannius, in Jul. Victor vi. 6. p. 224 Or.; Charisius, p. 143 Keil.

[6] Appian, *B. C.* i. 23. 101; Plut. *C. Gracch.* 9. Plutarch, who alone speaks of the exemption from rent, seems to consider the measure to have applied retroactively to the Sempronian settlements as well as to those proposed by Livius. Although this could hardly have been the intention of the Livian act, the exemption of the

sals,[1] turned against their true champion, and defeated him in the election for the tribunate for the ensuing year.[2] It was probably the same measure of Gaius for extending the citizenship which alienated from him the equites, who in every crisis pursued their own selfish ends.[3] In the ensuing struggle between the senate and Gaius they took the side of the former.[4]

In the tribunate of Gaius Gracchus the life of the comitia reached the highest point of intensity. The two years of his administration afford evidence of what the assembly could accomplish when directed by the personality of a great statesman.[5] The sum total of the measures adopted should be estimated not as a completed work, but as a foundation to be strengthened at defective points and to be built upon till the whole structure of the state and empire should be reconstituted and freshly vital-

colonists under it would naturally lead to the extension of equal privileges to the beneficiaries of the Sempronian agrarian laws.

[1] Appian, *B. C.* i. 35. 156 (cf. p. 397 below) assumes that the colonial bill of Livius became a law. If that is true, there is no reason for supposing that the other was dropped before being brought to vote. Gaius might have prevented both by his veto (Lange, *Röm. Alt.* iii. 45); but even if he felt the intention to be mischievous, he could not have afforded to oppose so popular measures. Mommsen, in *CIL.* i. p. 87, is of the opinion that Minervia may have been a Livian colony; but he cannot understand why the others provided for were not founded. The reason doubtless is that the senate, which had used Livius as a tool, never seriously intended to execute the law.

[2] A rogation of Gaius, proposed about the same time as the lex de civitate danda, concerning the order of voting in the comitia centuriata is mentioned by (Sall.) *Rep. Ord.* ii. 8: "Mihi . . . placet lex quam C. Gracchus in tribunatu promulgaverit, ut ex confusis quinque classibus sorte centuriae vocarentur: ita coaequatur dignitate pecunia." His object, to eliminate the influence of wealth, could be achieved by determining by lot the order of voting of the five classes; or a new grouping of the centuries could be substituted for the classes; but he could not have proposed that the centuries should vote one by one.

[3] We know that in 91 they vehemently opposed the admission of the allies; p. 399, 400 below; cf. Meyer, *Gesch. d. Gracch.* 106, n. 1.

[4] Opimius, consul in 121, ordered the equites to come each with two armed slaves to the support of the government; Plut. *C. Gracch.* 14. Sallust, *Iug.* 42, states that the senate, by holding out to the equites the hope of an alliance with the aristocracy, detached them from the plebs; cf. Meyer, ibid. 106.

The lex Acilia Rubria, passed most probably in 122, seems to have had to do with the participation of aliens in the worship of Jupiter Capitolinus; *S. C. de Astypalaeensibus*, in *CIG.* ii. 2485. 11 (cf. Böckh's comment); Lange, *Röm. Alt.* iii. 42. It is to be connected with the rogation for granting the citizenship to the allies, and probably aimed to liberalize the worship in the Sempronian spirit.

[5] Cf. Greenidge, *Hist. of Rome*, i. 231.

ized. These results might have been achieved, had Gaius lived out his natural life and retained the support of the populace and the knights.[1] His failure proved the comitia a weak, unsafe instrument for constructive statesmanship.

II. *The Aristocratic Reaction and the Popular Recovery* 122–103

The optimates waited only for the expiration of the tribunate of Gaius Gracchus to begin undoing his work, and they found the comitia ready to aid in the demolition. In 121 a plebiscite of M. Minucius Rufus repealed the Rubrian law for the colonization of Junonia (Carthage).[2] Soon afterward, certainly not later than 118, a plebiscite, whose author is unknown, permitted the beneficiaries of the Sempronian agrarian laws to sell the lots they had received.[3] This enactment was followed in 118 by a plebiscite which Appian[4] assigns to Spurius Borius (?), a name not otherwise known.[5] It put an end to the distributions, and must therefore have abolished the agrarian triumvirate. The same law confirmed all holders of the ager publicus in their possession, without converting any of this land into private property, and it continued the imposition of rents. We may assume that the lands here referred to included those recently distributed in small lots as well as those retained by the occupiers. Lastly it enacted that the revenues accruing from

[1] Dio Cassius, Frag. 85. 3, in a mutilated passage seems to refer to the great possibilities of a longer career. It would be unreasonable to suppose that so creative a mind could rest content at any given point.

[2] Fest. 201. 19; Flor. ii. 3. 4 (iii. 15); Diod. xxxiv. 28 a (from Posidonius); (Aurel. Vict.) *Vir. Ill.* 65. 5; Oros. v. 12. 5; Plut. *C. Gracch.* 13; App. *B. C.* i. 24. 105; *Pun.* 136; Lange, *Röm. Alt.* iii. 47; Greenidge, *Hist. of Rome*, i. 248; Mommsen, in *CIL.* i. p. 96.

[3] App. *B. C.* i. 27. 121; cf. Long, *Rom. Rep.* i. 352; Greenidge, ibid. i. 285; Ihne, *Hist. of Rome*, v. 4 f.

[4] Ibid. § 122.

[5] It seems to be a mistake for Spurius Thorius (Cic. *Brut.* 36. 136: "Sp. Thorius . . . . qui agrum publicum vitiosa et inutili lege vectigali levavit"). By interpreting this sentence "Sp. Thorius . . . who relieved the public land of a defective and useless law by the imposition of a vectigal," Mommsen (in *Verhdl. sächs. Gesellsch. d. Wiss.* 92 f.) attempts to bring Cicero into agreement with Appian. But the interpretation is violent and is not generally accepted. The statement of Cicero applies to the law of 111 far better than to that which Appian mentions under the name of Borius.

the rents should be used for distributions — probably of cheap grain.[1] In 111 another tribune, whom Cicero[2] names Sp. Thorius, through a law which has partially survived in an inscription, aimed to settle definitely and for all time in the interest of the nobles the questions raised by the Sempronian agrarian legislation.

I. This epigraphic lex agraria converts into private property the following classes of lands.[3]

(1) Land assigned to a colony or in any way made public, and afterward restored to the original owners (domneis). It is to be private optuma lege.[4]

(2) Land assigned to a colony and afterward restored to its former occupier (veteri possessori).[5]

(3) Land within the legal limit (of five hundred iugera) left to the occupier by the three commissioners.[6]

(4) Land assigned after 133 to colonies of Roman citizens.[7]

(5) Land given and assigned by the three commissioners after 133.[8]

(6) Land which has been occupied after 133 (not assigned by the commissioners) to the extent of not more than thirty iugera to the occupier.[9]

[1] App. ibid.; Lange, *Röm. Alt.* ii. 688; iii. 51; Long, *Rom. Rep.* i. 353 f.; Ihne, *Hist. of Rome*, v. 9; Greenidge, *Hist. of Rome*, i. 285–8. If, as Greenidge supposes, the Livian colonial rogation became a law, it did not affect the vectigal imposed by the Sempronian statutes (p. 383 above).

It may have been as a compensation for the repeal of this Sempronian statute and of that of Rubrius that a lex of an unknown author provided in this year for the establishment of the colony of Narbo Martius in Narbonensis; Vell. i. 15. 5; ii. 7. 8; Eutrop. iv. 23; Cic. *Brut.* 43. 160; *Cluent.* 51. 140; *Font.* 5. 13; Kornemann, in Pauly-Wissowa, *Real-Encycl.* iv. 522.

[2] *Brut.* 36. 136 (quoted p. 385, n. 5 above); cf. *Orat.* ii. 70. 284; App. *B. C.* i. 27. 123; *CIL.* i. 200; Rudorff, in *Zeitschr. f. gesch. Rechtswiss.* x (1842). 1–194; Mommsen, in *CIL.* i. p. 75 ff.; Herzog, *Röm. Staatsverf.* i. 478; Long, *Rom. Rep.* i. 351–86; Greenidge, *Hist. of Rome*, i. 288.

[3] The classification here given is a close reproduction of Mommsen, in *CIL.* i. p. 87–106; cf. *Verhdl. sächs. Gesellsch. d. Wiss.* i. 89–101.

[4] *Lex Agr.* 27 (cf. 4), in *CIL.* i. 200.

[5] Ibid. 20–23.

[6] Ibid. 2; cf. 13 f.

[7] Ibid. 3, 15 f. The word sortito in these passages, e.g. "IIIvir sortito ceivi Romano dedit adsignavit," proves a reference to the founding of colonies, as viritim assignations were not by lot; Mommsen, in *CIL.* i. p. 87.

[8] Ibid. 5.

[9] Ibid. 13 f. Although occupation was forbidden by the agrarian law of Ti.

(7) Land which by the provision of this law is to be sold, granted, or restored.[1]

All the lands above enumerated are declared private and free from vectigal and scriptura.[2]

II. The lands which the law declares public are those reserved from distribution by the law of Ti. Gracchus.[3] It retains further as public all lands along public roads which have been granted by the commissioners on condition that the recipients (viasieis vicaneis) in return for the use of the land undertake the duty of keeping the roads in repair. Though heritable and alienable, they remain subject to the burden here described.[4]

III. In the regulation of the agrarian conditions of Africa the statute deals with three kinds of land, (1) private ex iure quiritium,[5] (2) private ex iure peregrino,[6] (3) public domain of the Roman people of various sub-classes.[7] Lastly the statute aims to settle the status of the lands of Corinth.[8] As regards the Latins and aliens, whatever has already been permitted them by treaty or law is allowed them by this statute, provided the same thing is allowed a Roman citizen; but it is forbidden them if forbidden a citizen. Rights granted the citizens which up to this time are not enjoyed by aliens are not by this law communicated to aliens.[9]

Through this series of reactionary laws, from the Minucian (121) to the Thorian (111), the optimates succeeded in nullifying the good results of the Sempronian agrarian reforms. It was while the Minucian rogation[10] was under discussion that the senate took advantage of a disturbance in the concilium to arm the consul Opimius with absolute power for putting down

Gracchus (p. 366 above), they did take place, and are legalized by this article of the law of 111, in so far as they do not exceed the specified limit.

[1] *Lex Agr.* 12: "Eum agrum quem ex h (ace) l (ege) venire dari reddive oportebit"; cf. 32. We do not know what land is meant. Perhaps Sipontia is included in this category; cf. 43; Mommsen, in *CIL.* i. p. 89.

[2] *Lex Agr.* 19 f.; App. *B. C.* i. 27. 123; Cic. *Brut.* 36. 136: "Sp. Thorius . . . qui agrum publicum vitiosa et inutili lege vectigali levavit" ("Sp. Thorius . . . who by a mischievous and useless law freed the public land of vectigal").

[3] P. 365.

[4] *Lex Agr.* 11–3; Mommsen, in *CIL.* i. p. 90.

[5] *Lex Agr.* 45, 55, 59–61, 66–9, 79, 89.

[6] Ibid. 75 f., 79 f., 85.

[7] Mommsen, in *CIL.* i. p. 98 ff.

[8] *Lex Agr.* 96. This part of the inscription is hopelessly mutilated.

[9] Ibid. 29.

[10] P. 385.

C. Gracchus and his followers.[1] The failure of an attempt in the following year (120) to call Opimius to account for these proceedings established the right of the senate to the appointment of special commissions and to the decretum ultimum[2] — a right on which the optimates continued to insist to the end of the republic. Through the plebiscite of L. Calpurnius Bestia (also 120)[3] they put the stamp of legitimacy upon the murder of the followers of Ti. Gracchus by recalling from exile P. Popillius Laenas, who as consul in 132 and head of a special court was chiefly responsible for that judicial crime.[4] An attempt was made by Q. Servilius Caepio, consul in 106, to restore the courts to the senate,[5] or possibly to compromise by providing for an album composed of both senators and equites.[6] The sources imply that the measure was accepted by the comitia; but if so, it must have been immediately annulled, as it was not carried into effect.[7] Within this period of reaction, and perhaps as a part of it, falls the lex de libertinorum suffragiis of the consul M. Aemilius Scaurus, 115. Although nothing certain is known of it, we may suppose that it attempted again[8] to restrict the libertini to the four city tribes.[9] About this time, too,

[1] P. 255. [2] P. 256 f.

[3] Cic. *Brut.* 34. 128; cf. *Red. in Sen.* 15. 38; *Red. ad Quir.* 4. 9; 5. 11; Greenidge, *Hist. of Rome*, i. 279 f.; Ihne, *Hist. of Rome*, v. 6 f.

[4] P. 255.

[5] Tac. *Ann.* xii. 60, confirmed by a statement of Cicero, in Ascon. 79, that senators and knights first sat together as jurors under the Plautian law of 89 (p. 402 below).

[6] Cassiod. *Chron.* 384 C: "Per Servilium Caepionem consulem iudicia equitatibus et senatoribus communicata"; Obseq. 41 (101).

[7] Cf. further Cic. *Inv.* i. 49. 92; *Brut.* 43. 161; 44. 164; *Cluent.* 51. 140; Lange, *Röm. Alt.* ii. 668; iii. 67 f.; Long, *Rom. Rep.* ii. 2 f.; Greenidge, *Hist. of Rome*, i. 477–82. But that the knights continued in uninterrupted possession of the courts is proved by Cicero, *Verr.* i. 13. 38; Pseud. Ascon. 103, 145.

[8] P. 355.

[9] (Aurel. Vict.) *Vir. Ill.* 72. 5; Lange, *Röm. Alt.* iii. 53; Herzog, *Röm. Staatsverf.* i. 478. His lex sumptuaria of the same year, perhaps combined in one law with the provision concerning the libertini, limited not only the expense of meals but also the kind of food and the mode of preparing it; Pliny, *N. H.* viii. 57. 223; cf. Gell. ii. 24. 12; (Aurel. Vict.) ibid. — Two other sumptuary laws, both of which were enacted before 97, may be mentioned here. The statute of P. Licinius Crassus, pretorian or tribunician, ex senatus consulto, perhaps 104, made some changes in the lex Fannia and the lex Didia; Gell. ii. 24. 7; xv. 8; Macrob. *Sat.* iii. 17. 7; Fest. ep. 54; p. 356 above. — It was repealed by the plebiscite of M. Duronius before 97; Val. Max. ii. 9. 5; Lange, *Röm. Alt.* iii. 71, 88.

several acts seem to have been passed for diminishing the pay of soldiers, probably undoing the Sempronian law on the subject.[1]

A glance at these reactionary measures alone would leave the impression that the senate was recovering its entire supremacy. This result might have been reached had it not been on the one hand for the lasting inspiration of the Gracchan spirit in the plebs and their leaders, and on the other the new position of the equites. In 119 C. Marius, at once a representative of the knights[2] and of the peasants, opposed as tribune of the plebs the senatorial aristocracy, which now had to depend for immediate support upon the populace.[3] The optimates had greatly impaired the value of the secret ballot through the custodes tabellarum, who stood on the pontes as well as by the boxes (cistae) to keep watch over the voting. They were often influential men[4] — in elections selected by the candidates[5] — who used their influence with the voters, especially of the principium or of the prerogative century,[6] thereby maintaining for the aristocrats a high degree of control over the comitia in spite of the ballot laws.[7] For this reason C. Marius when tribune of the plebs carried an act for making the pontes narrower that there might be room on them for the voters only.[8] The politicians, however, soon found means of circumventing

[1] Ascon. 67 f.; cf. p. 382, 392.

[2] The reading of the MS. of Velleius, ii. 11. 1 ("natus equestri loco") should not be corrected to "agresti loco" to conform with Plut. *Mar.* 3. Velleius has mentioned his equestrian birth to explain his connections with the publicans referred to in the following sentence.

[3] The opposition of Marius to the populace is proved by his intercession against a frumentarian rogation of the same year, the purport of which is not definitely stated; Plut. *Mar.* 4.

[4] Cic. *Pis.* 15. 36; *Red. in Sen.* 11. 28. On the pontes, see p. 469.

[5] Varro, *R. R.* iii. 5. 18. On the custodes, see also p. 467 below.

[6] Cic. *Pis.* 5. 11; *Red. in Sen.* 7. 17; cf. p. 466.

[7] Cic. *Leg.* iii. 17. 38.

[8] Plut. *Mar.* 4; Cic. ibid.; Lange, *Röm. Alt.* ii. 490; iii. 51; Long, *Rom. Rep.* i. 322 f.; Greenidge, *Hist. of Rome*, i. 304–6. The opposition of the consuls to this measure, and the consequent threat of Marius to imprison them, Ihne, *Hist. of Rome*, v. 8, regards as a farce. This interpretation of the circumstances, however, is unnecessary for explaining the policy of Marius; as a champion of the peasants, rather than of the plebs as a whole, he consistently passed his election law and opposed the frumentarian bill.

this law as well as the use of the ballot.[1] The populares could expect little therefore from the plebiscite of C. Caelius, 107, which by extending the ballot to trials of perduellio, completed the abolition of oral voting in the comitia.[2]

We find another sign of popular recovery in the assembly's resumption of the appointment of special judiciary commissions.[3] One of the most remarkable courts of the kind was that created in 113 for the trial of three Vestal virgins on a charge of incest. The pontifex maximus, who possessed absolute authority over the Vestals, had already pronounced judgment, condemning one and acquitting the other two, when a plebiscite of Sex. Peducaeus, taking the case out of his hands, transferred it to a quaestio extraordinaria.[4] To such an extent did the tribune apply the theory of popular sovereignty.[5] The plebiscite of C. Mamilius, 109, ordered the appointment of a court for the detection and punishment of those who had accepted money from Jugurtha for aid rendered him against the decrees of the senate and the interests of Rome. As it was a blow aimed at the nobility, the people in the hatred they then cherished against the governing class voted it with great spirit.[6] In 105 the tribal comitia abrogated the proconsular imperium of Q. Servilius Caepio,[7] and in the following year, they not only appointed a special court to try him for embezzlement of the gold found at Tolosa,[8] but through the plebiscite of L. Cassius Longinus, they disqualified for membership of the senate any

[1] Plut. *Cat. Min.* 42.

[2] Cic. *Leg.* iii. 16. 36; Oros. v. 15. 24; cf. Münzer, in Pauly-Wissowa, *Real-Encycl.* iv. 195 f.; Lange, *Röm. Alt.* ii. 527; iii. 66. On the leges tabellariae in general, see Ihne, *Hist. of Rome*, iv. 94, 340; Long, *Rom. Rep.* i. 105–10; Lange, ibid. see indices, s. v. [3] P. 388.

[4] Cic. *N. D.* iii. 30. 74; Ascon. 46; Livy, ep. lxiii; Dio Cass. Frag. 87; Macrob. *Sat.* i. 10. 5 f. A plebiscite of C. Memmius, 111, de incestu (p. 377, n. 5) refers to the same subject. [5] Lange, *Röm. Alt.* ii. 697 f.

[6] Sall. *Iug.* 40. 65; Cic. *Brut.* 33. 127 f.; Schol. Bob. 311. In 111 a plebiscite of the C. Memmius mentioned in n. 4 had commissioned L. Cassius, praetor, to bring Jugurtha to Rome as a witness against those accused of having bribed him; Sall. *Iug.* 32.

[7] Livy, ep. lxvii; Ascon. 78; cf. (Cic.) *Herenn.* i. 14. 24, which refers to a defence against the tribunes. For the earliest case of the kind, see p. 360; cf. p. 342.

[8] The court was established by a plebiscite of C. Norbanus, 104; Dio Cass. Frag. 90; Gell. iii. 9. 7; Strabo iv. 1. 13; Cic. *N. D.* iii. 30. 74; *Balb.* 11. 28; Val. Max. iv. 7. 3; vi. 9. 13.

person whom the people had judicially condemned or whose imperium they had abrogated.[1] These acts confirmed and applied the principles underlying the deposition of Octavius and the rogation of C. Gracchus concerning persons deposed from office (abacti). In theory the people indirectly chose the senators through their function of electing magistrates; and they were only claiming this right when they insisted that he should be prohibited from membership whom they had condemned in either of the two ways described by the statute. It must have seemed to the people, on the other hand, that the tribunes, who were once more their true representatives, had as good a right as any other magistrates to seats in the senate. This feeling found expression in the Atinian plebiscite, enacted between 122 and 102,[2] which gave the tribunes the ius sententiae dicendae in the senate with the same right to censorial enrolment as that enjoyed by the curule magistrates.[3]

The growing strength of the people and at the same time the increasing dependence of the optimates on religion for the control of politics are indicated by a law of 103 concerning the election of sacerdotes. More than a hundred years earlier[4] was instituted the custom of electing the supreme pontiff and the chief curio in comitia of seventeen tribes designated by lot. Toward the end of the plutocratic régime C. Licinius Crassus in the interest of the people attempted in vain to pass a law for extending the principle to all the members of the more important sacerdotal colleges.[5] The proposal was defeated by the eloquence of C. Laelius,[6] but at length it was passed as the lex de sacerdotiis of Cn. Domitius, tribune of the plebs in 103. The statute affected the pontifical and augural colleges, the decemviri sacris faciundis, and the epulones.[7] According to the

[1] Ascon. 78: "Ut, quem populus damnasset cuive imperium abrogasset, in senatu non esset." The disgraceful defeat of Caepio in Gaul and his embezzlement of the treasury found at Tolosa excited the people to this line of action; cf. Herzog, *Röm. Staatsverf.* i. 484. On the author, see Münzer, in Pauly-Wissowa, *Real-Encycl.* iii. 1738. 63.

[2] The lex Acilia repetundarum (*CIL.* i. 198. 13, 16), adopted in 122, implies that they did not have the right; but they must have acquired it before 102; App. *B. C.* i. 28. 126.

[3] Ateius Capito, in Gell. xiv. 8. 2; Willems, *Sén. Rom.* i. 228.

[4] P. 341.

[5] Cic. *Amic.* 25. 96.

[6] Cic. ibid.; *Brut.* 21. 83; *N. D.* iii. 2. 5; 17. 43.

[7] P. 347.

new arrangement when a place became vacant in any one of these colleges, the members of the college drew up a list of eligible candidates from whom the comitia sacerdotum, composed as above described, made a choice.[1] In spite of this law religion remained a political tool of the optimates.

Meantime the popular party succeeded in enacting economic laws. A Porcian statute concerning interest, which may well have aimed to benefit the poor, seems to be the work of M. Porcius Cato, consul in 118. The author had to defend the act against several attempts to repeal it.[2] In 109 under the stress of the Cimbric war the consul M. Junius Silanus passed an act for repealing several earlier laws which had diminished the pay of soldiers. We may reasonably believe that it restored the Sempronian law on the subject.[3] His immediate object was to encourage enlistments.[4] An agrarian rogation was offered by L. Marcius Philipus, tribune of the plebs in 104. As the author was at heart a democrat, his measure was doubtless inspired with the spirit of the Gracchi. Perhaps it aimed to restore their law; but lacking determination, the proposer readily allowed it to be voted down.[5] The monetary lex Clodia, which probably belongs to the same year, has no political significance.[6]

III. *The Appuleian Legislation and the Rule of the Moderate Optimates*

103–88

Through the legislative acts above described we can trace the speedy restoration of the democracy and of comitial legis-

[1] Cic. *Leg. Agr.* ii. 7. 18; *Fam.* viii. 4. 1; *Ad Brut.* i. 5. 3; *Phil.* ii. 2. 4; xiii. 5. 12; Suet, *Ner.* 2; Vell. ii. 12. 3; Lange, *Röm. Alt.* ii. 537, 675; iii. 71; Wissowa, *Relig. u. Kult. d. Röm*, 418; Long, *Rom. Rep.* i. 49 f.; ii. 40–2; Herzog, *Röm. Staatsverf.* i. 484 f.

[2] Priscian, *Inst. Gram.* p. 90: "Cato nepos de actionibus ad populum, ne lex sua abrogetur: facite vobis in mentem veniat, quirites, ex aere alieno in hac civitate et in aliis omnibus propter diem atque fenus saepissimam discordiam fuisse." This is the only source for the measure.

[3] P. 388 *f.*

[4] Ascon. 67 f.

[5] The only source is Cic. *Off.* ii. 21. 73.

[6] Pliny, *N. H.* xxxiii. 3. 46; Mommsen-Blacas, *Hist. d. mon. Rom*, ii. 101 (for date and character).

lative power after the overthrow of C. Sempronius Gracchus. We are now approaching a second crisis in which the aristocracy had to struggle for existence. Against it was formed a combination of three powerful men, C. Marius, supported by the knights and the municipes,[1] C. Servilius Glaucia, and L. Appuleius Saturninus. It is almost certain that this Servilius is to be identified with the author of the lex repetundarum of 111 or thereabout, probably a plebiscite, which repealed the Acilian law on the same subject.[2] In important respects his statute was an improvement on earlier regulations of the crime. "Glaucia's alteration in procedure was thorough and permanent. He introduced the system of the 'second hearing'—an obligatory renewal of the trial, which rendered it possible for counsel to discuss evidence which had already been given, and for jurors to get a grasp of the mass of scattered data which had been presented to their notice[3]—and he also made it possible to recover damages, not only from the chief malefactor, but from all who had dishonestly shared his spoils."[4] These principles were taken up into the Cornelian law which superseded it in 81.[5] The circumstance that the man whom the optimates regarded as merely a vulgar demagogue was the author of so statesmanlike a measure ought to militate against their opinion, not only of him, but also of his associates. He, too, represented the knights,[6] whereas Appuleius was a champion of the rural plebs against the senate and the populace. As tribune of the plebs in 103 the latter proposed a law for the assignment of lands in the province of Africa to the retiring veterans of Marius in lots of a hundred iugera each. When Baebius, a colleague, inter-

[1] P. 389.

[2] Ascon. 21; Cic. *Rab. Post.* 4. 9; *Balb.* 23. 53; 24. 54. Cicero here informs us that by a provision of this law citizenship was offered to Latins as a reward for evidence in cases arising under it. This article was borrowed from the lex Acilia; p. 378. See also Val. Max. viii. 1. 8; Cic. *Brut.* 62. 224; Greenidge, *Hist. of Rome*, i. 309–11. Proof of the repeal of the Acilian law no later than that year is the circumstance that on the reverse of the stone which contains it is inscribed the agrarian law of 111; Mommsen, *CIL.* i. p. 55 f.

[3] Cic. *Verr.* i. 9. 26.

[4] Cic. *Rab. Post.* 4. 8 f. The quotation is from Greenidge, *Hist. of Rome*, i. 310.

[5] Cic. *Rab. Post.* 4. 9; cf. Mommsen. *Röm. Strafr.* 709; Greenidge, *Leg. Proced.* 423.

[6] Cic. *Brut.* 62. 224.

ceded, the people pelted him with stones and drove him from the assembly. Thus the law was violently carried, but we hear nothing more of it. Probably it was not enforced.[1] This act marks an epoch in the history of Roman colonization; through it the government first expressed its intention to provide discharged soldiers with farms, a departure made necessary by the Marian policy of filling the army with capite censi.[2] Either to this tribunate or more probably to his second belongs the lex de maiestate (minuta),[3] the first of the kind in Roman history. It defined the crime and made general provisions for the prosecution of those who were accused of it.[4] The same statute provided for the establishment of a court which seems to have been standing rather than special.[5]

In his second tribunate, 100, supported by Marius, consul a sixth time, and by Servilius, Appuleius proposed and carried a law for the founding of settlements of the Marian veterans in Sicily, Corsica, Achaia, and Macedonia.[6] Marius was to

[1] (Aurel. Vict.) *Vir. Ill.* 73. 1: "Ut gratiam Marianorum militum pararet, legem tulit, ut veteranis centena agri iugera in Africa dividerentur, intercedentem Baebium collegam facta per populum lapidatione submovit"; Lange, *Röm. Alt.* iii. 76; Herzog, *Röm. Staatsverf.* i. 485; Klebs, in Pauly-Wissowa, *Real-Encycl.* ii. 262. In the opinion of Mühl, *App. Sat.* 77 f., the colonia Mariana (p. 396 below) was founded under this law.

[2] P. 86, 89.

[3] Cic. *Orat.* ii. 25. 107; 49. 201; *N. D.* iii. 30. 74.

[4] As indicated by the fact that the trial of C. Norbanus in 95 took place under the law; Cic. *Orat.* 21. 89; 25. 107; 50. 203; *Off.* ii. 14. 49; Val. Max. viii. 5. 2.

[5] The theory that the court established by the Appuleian law was special is held by Mommsen, *Hist. of Rome*, iii (1898). 440, n. 1; *Röm. Staatsr.* ii. 664, n. 1; *Röm. Strafr.* 198. Lange, *Röm. Alt.* iii. 76, 82, supposes that in his first tribunate he established a special court and in his second by his lex maiestatis a quaestio perpetua. Mühl, *App. Sat.* 74, also strongly favors the second. The statement of Gran. Licin. xxxiii (?). 4 — "Cn. Manilius (for Manlius or Mallius; cf. *CIL.* i². p. 152 f.) ob eandem causam quam et Cepio L. Saturnini rogatione e civitate est cito (for plebiscito ?) eiectus" — Lange applies to the rogation for a special court. The circumstance that the trial of Norbanus took place no less than five years after the enactment of the law and the general tenor of Cicero's account of that trial (see n. 4 above) point clearly to the existence of a standing court; cf. Herzog, *Röm. Staatsverf.* i. 485; Madvig, *Röm. Staat.* ii. 275; Klebs, in Pauly-Wissowa, *Real-Encycl.* ii. 262 f.; Lengle, *Sull. Verf.* 23–32.

To the same tribune, either in 103 or in 100, may belong the lex Appuleia de sponsu (Gaius iii. 122; p. 298, n. 1 above). In that case the lex Furia de sponsu (Gaius iii. 121; iv. 22; cf. same page above) must belong to the first century B.C.

[6] (Aurel. Vict.) *Vir. Ill.* 73. 5: "Tribunus plebis refectus (Saturninus) Siciliam,

be a commissioner for conducting these colonies, and was to have the right to enroll as citizens in each settlement a specified number of aliens.[1] The object of the latter clause was doubtless to provide for the Italian veterans in his army. He proposed further that certain Transpadane lands which the Cimbri had taken from the Gauls and which Marius had recovered should be distributed among the citizens and the Italians.[2] Another proposal was for the monthly sale of a specified number of modii of grain to every citizen resident of Rome who desired it at five-sixths of an *as* to the modius — a merely nominal price.[3] It is not known whether the colonial, agrarian, and frumentarian measures were separate enactments or articles of one statute; or the colonial and agrarian provisions may alone have been combined. However that may be, we are informed by Appian[4] that attached to the agrarian measure — whether to the others also is nowhere stated — was an article which provided that if the bill should become a law, the senators within five days should swear to uphold it, or if any senator refused to take the oath, he should be expelled from the senate and should be liable to a fine of twenty talents, the Greek equivalent of about five hundred thousand sesterces.[5] The rural plebs, including many discharged soldiers of Marius, swarmed into the comitia at the call of the tribune and violently passed the law. Marius, who as a consul and a knight disapproved of such illegality, set for the senators the example of swearing to the law, "in so far as it was a law," which left them a loophole of escape from its provisions should they afterward so determine. Metellus, who alone of the senators refused the oath, was forced into exile and an interdict from fire and water was

Achaiam, Macedoniam novis colonis destinavit et aurum (Tolosanum), dolo an scelere Caepionis partum, ad emptionem agrorum convertit." For Corsica, see p. 396.

[1] Cic. *Balb.* 21. 48. The MS. reads "ternos," which may be a mistake for a larger number (trecenos ?).

[2] App. *B. C.* i. 29. 130, 132; Long, *Rom. Rep.* ii. 111 f.; Herzog, *Röm. Staatsverf.* i. 486.

[3] (Cic.) *Herenn.* i. 12. 21; Long, *Rom. Rep.* ii. 114 f.; Herzog, ibid. i. 486 f.

[4] *B. C.* i. 29. 131; cf. Plut. *Mar.* 29.

[5] Cf. Klebs, in Pauly-Wissowa, *Real-Encycl.* ii. 265.

passed against him by the tribes on the motion of Saturninus.[1] Soon afterward an election riot gave the senate a pretext for martial law. Placed under custody, Saturninus and some fellow officials were stoned to death by a mob. His measures were then annulled by the senate on the ground that they had been violently passed;[2] nevertheless Mariana was founded by Marius in Corsica, apparently under the colonial provision.[3] The import of the agrarian law of Sex. Titius, tribune of the plebs in 99, is unknown.[4] It may have been merely a reënactment of the Appuleian measure. At all events before it could be put into force it was annulled by the senate on the ground that it had been passed by violence and against the intercession of colleagues.[5]

The optimates, having again triumphed over the democracy, adopted a policy of moderation. Their consuls of 98, Q. Caecilius Metellus and T. Didius, attempted by a mild statute to check the most flagrant abuses of tribunician legislation, (1) the combination of various dissimilar provisions in one bill (lex satura) for the purpose of drawing the votes of all parties, (2) the passing of bills through the assembly by surprise. Their law accordingly, reviving usages once in force but recently neglected, forbade such combinations[6] and ordered that the

[1] App. *B. C.* i. 30 f.; Plut. *Mar.* 29; (Aurel. Vict.) *Vir. Ill.* 73; 8; Vell. ii. 15. 4; Val. Max. iii. 8. 4; Cic. *Dom.* 31. 82; *Har. Resp.* 19. 41; *Sest.* 47. 101; *Leg.* iii. 11. 26. After the downfall of Appuleius, Metellus was recalled by a plebiscite of Q. Calidius, 98; Cic. *Planc.* 28. 69; *Dom.* 32. 87; *Red. ad Quir.* 4. 9; 5. 11; Val. Max. v. 2. 7; App. *B. C.* i. 33. 147–9; Dio Cass. Frag. 95. 1; (Aurel. Vict.) *Vir. Ill.* 62. 3. On this Calidius, see further Münzer, in Pauly-Wissowa, *Real-Encycl.* iii. 1354. 5. A fruitless attempt to recall Metellus had been made in 99 through the tribunician rogatio Porcia Pompeia; Oros. v. 17. 11; App. *B. C.* i. 33.

[2] Cic. *Leg.* ii. 6. 14. According to Oros. v. 12. 10, P. Furius, tribune in 99, secured the enactment of a law for confiscating the property of those who conspired against the state.

[3] Pliny, *N. H.* iii. 12. 80: "Marianam a C. Mario deductam"; Seneca, *Ad. Helv.* vii. 9; Solin. iii. 3; Mela ii. 7. 122; Mommsen, in *CIL.* x. p. 838, 997; Kornemann, in Pauly Wissowa, *Real-Encycl.* iv. 522.

[4] Obseq. 46 (106); Val. Max. viii. 1. damn. 3; cf. Cic. *Orat.* ii. 11. 48.

[5] Cic. *Leg.* ii. 6. 14; 12. 31; Obseq. ibid. A criminal lex Titia, the contents of which also are unknown — Auson. *Epigr.* 92 (89). 4 — may belong to this tribune; Lange, *Röm. Alt.* ii. 661, 668.

[6] Cic. *Dom.* 20. 53; *Leg.* iii. 4. 11; 19. 43. The enactment was merely the con-

promulgation should precede the voting by at least a trinum nundinum — an interval which included three market days.[1] Similarly in 95 their consuls, L. Licinius Crassus and Q. Mucius Scaevola, aimed by an equally moderate law to check the usurpation of the citizenship on the part of aliens. It forbade peregrini to perform the functions of citizens, though it did not order the innocent among them to leave Rome.[2] It provided for the appointment of a special commission to discover and punish usurpers of the citizenship.[3] Those found guilty were sent back to their communities.[4] Though the authors were eminent in justice and cherished the best intentions, their law proved to be not merely useless but most pernicious to the state,[5] as it helped drive the Italians to revolt.[6]

The next attempt at reform proceeded from the inmost circle of the aristocracy.[7] M. Livius Drusus, tribune of the plebs in 91, was a man of the highest nobility, wealthy, eloquent, and upright at heart, the son of that Livius who had opposed C. Gracchus.[8] Regarding his aims and the quality of his statesmanship conflicting opinions have been expressed by modern scholars. The sources intimate that he wished primarily to strengthen the senate by breaking away from its hide-bound conservatism and undertaking various pressing reforms. His agrarian measure was conceived in the Gracchan spirit but was more radical.[9] Appian[10] states that it proposed the founding of colonies voted long ago but not yet established. Reference must be to the twelve colonies planned by his father.[11] It prob-

firmation of an old custom or law introduced between the Licinian-Sextian legislation and 122; cf. *Lex Acil.* 72, in *CIL.* i. 198.

[1] Cic. *Dom.* 16. 41; *Sest.* 64. 135; Schol. Bob. 310. This, too, was a confirmation of an earlier usage; Dion. Hal. vii. 58. 3; x. 3. 5; Livy iii. 35. 1; p. 189, 260, n. 1 above; cf. Mommsen, *Röm. Staatsr.* iii. 336, 376 f.

[2] Cic. *Off.* iii. 11. 47; cf. p. 354, 370.

[3] Cic. *Balb.* 21. 48.

[4] Cic. *Brut.* 16. 63; Schol. Bob. 296.

[5] Cic. Frag. A. vii. 20.

[6] Ascon. 67. On the law in general, see Lange, *Röm. Alt.* iii. 90; Long, *Rom. Rep.* ii. 128; Herzog, *Röm. Staatsverf.* i. 490. On Caecilius and Didius, see Münzer, in Pauly-Wissowa, *Real-Encycl.* iii. 1216. 95; v. 407–10.

[7] Vell. ii. 13. 1; Dio Cass. Frag. 96. 2; Diod. xxxvii. 10.

[8] The citations of the preceding note, and Ascon. 68; Livy, ep. lxx; less clearly Flor. ii. 5. 1, 4 (iii. 17).

[9] (Aurel. Vict.) *Vir. Ill.* 66. 4 f.; *CIL.* vi. 1312 (i. p. 279 vii). Livy, ep. lxxi, merely mentions them.

[10] *B. C.* i. 35. 156.

[11] P. 383 above.

ably abolished the statute of 111 and ordered the division not only of the Campanian lands,[1] but also of those public domains which were held by the allied communities — in brief, of all the public land remaining in Italy and Sicily ;[2] and it established a board of ten for making the assignments.[3] Livy[4] attributes to the author a frumentarian proposal, though we are not informed of its character. The aim must have been to win the support of the populace for his other measures.[5]

He further proposed to mix with the silver coinage an eighth part of copper,[6] the proceeds of this gain to be applied perhaps to the execution of his frumentarian project.[7] There is much controversy as to the intent of his judiciary reform. Appian[8] supposes that he wished to add three hundred knights to the senate and to draw the jurors from that body thus enlarged. Velleius[9] is of the opinion that his aim was to transfer the iudicia to the senate ; whereas the epitomator of Livy[10] directly states that he provided for making up the iudicia of senators and knights in equal numbers. We may partially reconcile these conflicting statements by supposing that he planned to compose the jurors' album of six hundred senators and knights in equal numbers, by which expedient he hoped to bring these two hostile orders back to their former harmony,[11] while serving the

[1] This may be inferred from the silence of Cicero, *Leg. Agr.* i. 7. 21; ii. 29. 81; cf. Lange, *Röm. Alt.* iii. 102; Ihne, *Hist. of Rome*, v. 181; Herzog, *Röm. Staatsverf.* i. 490.

[2] App. *B. C.* 36. 162 f.; Flor. ii. 5. 6 (iii. 17): "Exstat vox ipsius nihil se ad largitionem ulli reliquisse nisi siquis aut caenum dividere vellet aut caelum."

[3] *CIL.* vi. 1312 ; cf. i. p. 279. vii. A beginning was actually made of the colonization; and this is all that could be indicated by the verb ὑπήγετο (App. *B. C.* i. 35. 156), "he was for conducting." [4] Ep. lxxi.

[5] Cf. Vell. ii. 13. 2; Livy, ep. lxx f.

[6] Pliny, *N. H.* xxxiii. 3. 46. The idea was to issue one silver-plated copper denarius to every seven silver denarii; Mommsen, *Röm. Münzw.* 387 (Mommsen-Blacas, *Hist. d. mon. Rom*, ii. 41 f., 82); Babelon, *Mon. d. la rép. Rom*, i. introd. p. lix. [7] Lange, *Röm. Alt.* ii. 674; iii. 103.

[8] *B. C.* i. 35. 157 f. The same view seems to be held by (Aurel. Vict.) *Vir. Ill.* 66. 4. It is accepted by Lange, *Röm. Alt.* iii. 97; Greenidge, *Leg. Proced.* 436. The objection is that a judiciary measure, as the Livian, could not have dealt primarily with the composition of the senate; Herzog, *Röm. Staatsverf.* i. 489.

[9] II. 13. 2. Florus, ii. 5. 4 (iii. 17), is non-committal.

[10] LXXI; accepted by Ihne, *Hist. of Rome*, v. 177.

[11] Cf. App. *B. C.* i. 35. 157.

interests of the senate and ridding the state of the corrupt and tyrannical rule of the knights.[1] By a special article of the rogation a quaestio, probably perpetua, was to be appointed to inquire into the cases of bribery of jurors and to punish the guilty.[2] His most radical measure, introduced after opposition to his other reforms began to develop,[3] was for extending the citizenship to the Latins[4] and to all the Italians.[5] This group of proposals, designed for the benefit of all parties, proved distasteful to all. The senators found a ground for complaint in the circumstance that the knights would have equal power with them in the courts; the knights were unwilling to surrender their judicial control or to grant the franchise to the Italians; the wealthy Italians feared they might lose the public lands which they still held. Only the poor among the Romans and allies supported the proposal in the hope of profiting by the distribution of lands.[6] The agrarian, frumentarian, monetary, and judiciary measures were combined in one statute, and passed with violence[7] and contrary to the omens.[8] On these grounds and furthermore because they violated the article of the Caecilian-Didian statute forbidding the passing of a lex satura, they were annulled by the senate.[9] Although Drusus might have interposed his veto against this decree, he preferred rather to disregard it, most probably on the theory that the senatorial authority did not avail against the sovereign will of the people.[10] Aware that his intercession would but postpone the annulment to another

[1] Flor. ii. 5. 3 (iii. 17); App. *B. C.* i. 35. 158.

[2] Cic. *Rab. Post.* 7. 16; *Cluent.* 56. 153; Ihne, *Hist. of Rome*, v. 177 f.

[3] Velleius, ii. 14. 1, regards it as an afterthought, whereas Appian, *B. C.* i. 35. 155, asserting that, petitioned by the Italians for the citizenship, he had already promised to grant it, intimates that this was his main object. At all events the Italians expected it of him and were prepared to support him in his effort by force of arms.

[4] (Aurel. Vict.) *Vir. Ill.* 66. 4; Oros. v. 18. 2.

[5] Vell. ii. 14. 1; App. *B. C.* i. 35. 155 f.; 36. 162; Livy, ep. lxxi; Flor. ii. 5. 6. Most probably he combined this measure with his colonial rogation; App. *B. C.* i. 36.

[6] App. *B. C.* i. 35 f.

[7] Livy, ep. lxxi; Flor. ii. 5. 7 (iii. 17).

[8] Ascon. 68.

[9] Cic. *Leg.* ii. 6. 14; 12. 31; *Dom.* 16. 41; Frag. A. vii (*Cornel.* i. 24); Ascon. 68; Diod. xxxvii. 10. 3.

[10] According to Diod. xxxvii. 10. 3, he declared that though he had full power to prevent the decree, he would not willingly exert it; for he knew well that the wrongdoers in this matter would speedily suffer merited punishment.

year, he contented himself with informing his opponents that his measures were absolutely necessary for the security of the state, and that those who offended against them did it at their peril. He proceeded to carry his statute into immediate effect.[1] A plebiscite of Saufeius, a colleague, established a commission of five in addition to the ten provided for by the Livian statute; and Livius was elected a member of both commissions.[2] After his murder the Livian and Saufeian statutes were both considered null and void.[3]

The lex Remmia de calumniatoribus, which was enacted before 80, may belong to the year of the Livian attempt at reform, 91;[4] and in that case it would be most natural to regard it as a piece of counter legislation to offset the proposal for establishing a court for the trial of jurors accused of bribery. The complainant who was proved malicious it rendered liable to trial and punishment with the loss of citizenship and the branding of his forehead with the letter K (for Kalumniator).[5] This we may believe was the defiance offered by the knights to those who were attempting to bring them to account for their conduct as judges. Exulting in their victory over Drusus, they expressed their antipathy to the Italian movement in a lex de maiestate of Q. Varius, tribune of the plebs in 90. They stood round the Rostra with drawn daggers and forced it through the comitia in spite of tribunician intercession. It supplanted the Appuleian law on the subject by a severe provision against those who encouraged the Italians to demand the citizenship or in

[1] Cf. the elogium, n. below.

[2] Elogium, in *CIL.* vi. 1312 = i. p. 279. vii: "M. Livius M. F. C. N. Drusus, Pontifex, tr. mil. X. vir. stlit. iudic. tr. pl. X. vir. a. d. a. lege sua et eodem anno V. vir. a. d. a. lege Saufe(i)a, in magistratu occisus est."

[3] On M. Livius Drusus, see Lange, *Röm. Alt.* iii. 96–106; Long, *Rom. Rep.* II. ch. xiii; Herzog, *Röm. Staatsverf.* i. 488–93; Ihne, *Hist. of Rome*, V. ch. xiii; Mommsen, *Hist. of Rome*, bk. IV. ch. vi; Neumann, *Gesch. Roms*, i. 451–74; Ferrero, *Rome*, i. 79 f.

[4] (Aurel. Vict.) *Vir. Ill.* 66. 2; Cic. *Rosc. Am.* 19. 55; Schol. Gronov. 431; Ascon. 30; *Dig.* xxii. 5. 13; xlviii. 16. 3. 2; Lange, *Röm. Alt.* ii. 665; iii. 101; Mommsen, *Röm. Strafr.* 491, 494. Hitzig, in Pauly-Wissowa, *Real-Encycl.* iii. 1416, places it earlier.

[5] Cic. *Rosc. Am.* 20. 57; Pliny, *Paneg.* 35; Seneca, *De Ira*, iii. 3. 6; Mommsen, *Röm. Strafr.* 495. It is almost certain that the punishment mentioned was prescribed by this law; Hitzig, ibid.

any way to conspire or to revolt against the Roman people. It must have contained an article, too, concerning seditions.[1] The court which it established was to sit on all ordinary dies fasti, undisturbed by iustitia,[2] and was to be a quaestio perpetua.[3] Now that two attempts, the Appuleian and the Livian, to substitute more popular measures for the Sempronian frumentarian law had failed, the optimates found themselves strong enough to supersede the Sempronian act by one less popular. This was the Octavian law,[4] the contents of which are unknown, but which received the praise of Cicero for its moderation.[5]

The Social War, following close upon the murder of Livius Drusus, compelled the Romans to grant the citizenship to the Italians. This result was brought about by a succession of statutes. A law of the consul L. Julius Caesar, 90, bestowed the citizenship upon the Latins[6] and on all the Italians who had not taken arms against Rome[7] and who were willing to accept the gift.[8] The same statute probably regulated the assignment

[1] This conclusion is deduced from the circumstance that Varius was tried under his own law. The charge could not possibly have been that of favoring the Italians, but must rather have been the instigation of the sedition by which his statute was originally carried; Lengle, *Sull. Verf.* 35.

[2] Cic. *Brut.* 89. 304: "Exercebatur una lege iudicium Varia, ceteris propter bellum intermissis."

[3] This is an inference from the fact that the court which tried Cn. Pompeius Strabo in 88, and which sat under the Varian law, was composed in accordance with the subsequent Plautian judiciary law (Cic. Frag. A. vii. *Cornel.* i. 53). A special court was composed in no other way than by the law which established it. In general on the Varian law, see Ascon. 21 f., 73, 79; Val. Max. viii. 6. 4; App. *B. C.* i. 37; Cic. *Tusc.* ii. 24. 57. From Appian we learn that the law was passed before the outbreak of the Social War, and Cicero, *Brut.* 89. 305, informs us that the prosecutions under it continued through the war. The last trial mentioned is that of Cn. Pompeius Strabo in 88, referred to above. See also Lange, *Röm. Alt.* iii. 108; Herzog, *Röm. Staatsverf.* i. 493; Mommsen, *Röm. Strafr.* 198; Long, *Rom. Rep.* ii. 164 f.; Greenidge, *Leg. Proced.* 384 f.; Ihne, *Hist. of Rome*, v. 188 f.; and especially Lengle, *Sull. Verf.* 32–6, where further sources are cited.

[4] Cic. *Brut.* 62. 222. It belongs to about 90; Lange, *Röm. Alt.* ii. 693.

[5] *Off.* ii. 21. 72. It is an interesting fact that, as this passage shows, Cicero did not object to frumentarian laws on principle, but condemned the Sempronian act because it was burdensome to the treasury.

[6] Gell. iv. 4. 3.

[7] Vell. ii. 16. 4; cf. App. *B. C.* i. 49. 212 (who speaks merely of a senatus consultum). This statute seems to have considered the Po the northern boundary of Italy; Sall. *Hist.* i. 20.

[8] Cic. *Balb.* 8. 21: "Ipsa Iulia lege civitas ita est sociis et Latinis data, ut, qui

of these new citizens to the tribes.[1] In the following year a law of L. Calpurnius Piso, probably a tribune, granted the commanding general power, apparently absolute, to bestow the right of the city upon the soldiers under his orders.[2] Another statute of 89, carried by M. Plautius Silvanus and C. Papirius Carbo, tribunes of the plebs, granted the citizenship to all members of allied communities who were domiciled in Italy at the time the statute was passed and who within sixty days should signify to the praetor at Rome their willingness to accept the offer.[3] The object of this measure was not only to expedite the reconciliation, but also to make the work of the next censors practicable. The citizenship thus granted involved the right of suffrage, though in new tribes which voted after the others. Many Italians, especially the Lucanians and the Samnites, took no notice of the offer.[4] In the same year Cn. Pompeius Strabo, a consul, proposed and carried a law which seems to have empowered himself at his discretion to invest with full citizenship those Transpadani who already enjoyed the Latin rights, and to confer upon the rest the ius Latii.[5]

The question as to the composition of the courts, still left unsettled, was taken up by M. Plautius Silvanus, the tribune referred to above. His statute transferred the filling of the album from the urban praetor to the tribes, which were to elect each fifteen members. The law made the qualifications of the iudices independent of the social classes. Under it accordingly senators and a few common plebeians in addition to equites served as jurors, so that the equestrian control of the courts was partially checked.[6]

fundi populi facti non essent, civitatem non haberent." On fundus see Fest. ep. 89. Heraclea and Naples declined the citizenship; Cic. ibid.

[1] P. 57 f.

[2] Cic. *Arch.* 10. 26; *Balb.* 8. 19; 14. 32; 22. 50; *Fam.* xiii. 36; Sisenna, Frag. 17, in Peter, *Hist. Rom. Reliq.* i. 280; Frag. 120, ibid. 293: "Milites, ut lex Calpurnia concesserat, virtutis ergo civitate donari"; cf. Kiene, *Röm. Bundesgenossenkrieg*, 224 f., 229 f. The identity of the author is uncertain; he may be the Calpurnius who was praetor in 74; Münzer, in Pauly-Wissowa, *Real-Encycl.* iii. 1395. 98.

[3] Cic. *Arch.* 4. 7: Schol. Bob. 353.

[4] Dio Cass. Frag. 102. 7.

[5] Dio Cass. xxxvii. 9. 3; Ascon. p. 3; Pliny, *N. H.* iii. 20. 138; Lange, *Röm. Alt.* iii. 118; cf. however Herzog, *Röm. Staatsverf.* i. 497 f.

[6] Cic. Frag. A. vii. 53; Ascon. 79; Lange, *Röm. Alt.* ii. 539, 668 f.; iii. 115; Herzog, *Röm. Staatsverf.* i. 499; Greenidge, *Leg. Proced.* 385; Long, *Rom. Rep.* ii.

Mommsen[1] supposes that these jurors were for the quaestio de maiestate only. For this opinion he depends upon the assertion of Cicero[2] that the equites remained till Sulla's legislation in uninterrupted possession of the courts. The authority of Cicero, however, would allow us to assume that while the equites lost the legal monopoly they retained practical control. However that may be, it is hardly possible that this reactionary measure survived the proletarian uprising under Marius and Cinna. The lex agraria of the same Plautius seems to have been intended for supplying the veterans of the Social War with farms.[3] The lex Papiria, which introduced the semiuncial *as*, is doubtless to be assigned to C. Papirius Carbo, the colleague of Plautius above mentioned. If so, the object was to relieve slightly the financial embarrassment caused by the war, and more particularly to bring the small coins of Rome into correspondence with those of Italy.[4]

IV. *The Political Equalization of Italy* 88–83

With many Italians still in revolt and the others smarting under the inferior citizenship eked out to them, and with Mithridates threatening the existence of the empire, Rome should have adopted a policy of domestic conciliation. Under these circumstances Sulla, consul in 88, showed a lamentable want of tact in expressing the sentiment that there could be no peace in Italy as long as a single Samnite lived[5] — a curiously antiquated frame of mind for a statesman of his shrewdness. The cause of the new citizens was taken up by P. Sulpicius Rufus, a patrician who had forsaken his rank to qualify himself for the plebeian tribunate.[6] A man of marvellous eloquence, he had

213 f. We may connect with this change the prosecution and condemnation of Q. Varius; p. 401, n. 1 above; Ihne, *Hist. of Rome*, v. 224 f.

[1] *Röm. Strafr.* 198, n. 1, followed by Greenidge, *Leg. Proced.* 386. A difficulty with this interpretation is the great number of jurors provided for, apparently enough to supply all the courts.

[2] Verr. i. 13. 38.

[3] Cic. *Att.* i. 18. 6.

[4] Pliny, *N. H.* xxxiii. 3. 46; Kubitschek, in Pauly-Wissowa, *Real-Encycl.* ii. 1512; Gardner, in Smith, *Dict.* i. 206; Babelon, *Monn. de la rép. Rom.* i. 74 f.

[5] Strabo v. 4. 11.

[6] P. 162.

been an adherent of Drusus, though more inclined to the equestrian interests. As tribune of the plebs, 88, he seems to have tried to win the support of the senate and of the equestrian order to his policy; but failing in the attempt, he looked for aid to the commons and to a small band of knights who were faithful to him. His rogation contained the following articles: (1) that the new citizens and the libertini should be distributed among all the tribes,[1] with a view to completing the plan of Livius Drusus for the political equalization of Italy; (2) that those who had been driven from the state by violence should be recalled.[2] This article was probably for the benefit of those knights against whom the Varian law had been turned.[3] His rogation provided further, (3) that no one who owed more than two thousand denarii should be a senator.[4] Money was scarce because of the war;[5] and Sulpicius must have felt that if the senators, most of whom were abundantly able, should pay their debts, it would go far toward relieving the stringency, and that if any were ejected because of failure to pay, an opportunity would be afforded of promoting equites to the vacant places. The consuls of the year, L. Cornelius Sulla and Q. Pompeius Rufus, attempted to prevent a vote on these radical measures by interposing a cessation of business for many days through the proclamation of a festival.[6] With his armed followers Sulpicius forced the consuls to recall the proclamation, whereupon Sulla fled for safety to his army at Nola. Sulpicius then added to his statute a fourth article to the effect that the imperium of Sulla should be abrogated and that the province of Asia, involving the conduct of the war against Mithridates, should be given to Marius as proconsul,[7]

[1] Livy, ep. lxxvii; App. *B. C.* i. 55. 242 f.; Vell. ii. 18. 6; Ascon. 64; Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1532. The libertini may have been those who fought in the recent war; App. *B. C.* i. 49. 212; Macrob. *Sat.* i. 11. 32.

[2] (Cic.) *Herenn.* ii. 28. 45; Livy, ep. lxxvii; Lange, *Röm. Alt.* iii. 123; Herzog, *Röm. Staatsverf.* i. 501.

[3] P. 400 f.

[4] Plut. *Sull.* 8.

[5] P. 403 above; also Ferrero, *Rome*, i. 84.

[6] In this way a justitium, cessation of civil business, was indirectly brought about; Plut. *Sull.* 8; *Mar.* 35; App. *B. C.* i. 55. 244; p. 141 above; Long, *Rom. Rep.* ii. 221; Neumann, *Gesch. Roms*, i. 513; Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1533; Mommsen, *Röm. Staatsr.* i. 263, n. 6.

[7] For the abrogation of Sulla's imperium Vell. ii. 18. 6 is authority. Plutarch, *Sull.* 8, states that Pompeius, not Sulla, was deprived of the consulship and that from Sulla was taken merely the provincial command. Appian, *B. C.* i. 56. 249 (cf.

although the latter was now but a private citizen. Doubtless Sulpicius understood that there could be no guarantee for the execution of his statute as long as Sulla remained in power, and furthermore that the advancement of Marius would be a great gain for the knights. The bill was passed by the comitia of tribes; but Sulla, far from delivering up his command, marched his army into Rome to settle the question in his own interest by the sword. On his initiative Sulpicius, Marius, and ten of their associates were declared public enemies by a decree of the senate ratified by a popular vote.[1] There is no need of assuming that the supporters of the tribune turned against him; the optimates were as clever as their opponents at packing assemblies. The absurdity of continuing the worn-out comitial machinery as a factor of government is nowhere more apparent than on this page of history, which records that the comitia a few days after adopting the measures of Sulpicius, voted to outlaw him and his friends. Marius fled; Sulpicius and several adherents were killed. Thereupon the senate annulled the entire Sulpician statute on the ground that it had been violently passed.[2]

No statesman, however opposed to popular government, could think of abolishing the comitia or even of putting an end to their legislative function. But the democracy could be effectu-

Plut. *Mar.* 35; Schol. Gronov. 410) speaks only of the transfer of the command. That the fourth article was added after the departure of Sulla from Rome, and that the latter knew nothing of it till summoned to deliver up his command is clearly stated by Appian, ibid. ch. 56 f.; cf. Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1533 f.

[1] Plutarch, *Sull.* 8 and Livy, ep. lxxvii, speak of a decree of the senate only, whereas the account of Appian, *B. C.* i. 60. 271 (Πολεμίους Ῥωμαίων ἐψήφιστο εἶναι) implies a vote of the assembly. Velleius, ii. 19. 1 ("Lege lata exules fecit") distinctly mentions a comitial act, though he is wrong in supposing it to be a sentence of exile, as may be gathered from his context; cf. Ihne, *Hist. of Rome*, v. 237.

[2] App. *B. C.* i. 59. 268; Cic. *Phil.* viii. 2. 7. Scholars are at variance as regards the character and motives of Sulpicius. Herzog, *Röm. Staatsverf.* i. 501 (cf. Ferrero, *Rome*, i. 85 f.), can see in his measures no earnest purpose of reform. Ihne, *Hist. of Rome*, v. 225 f., 233 f., hesitatingly inclines to regard him as a demagogue. Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1532, looks upon him as a statesman with a mind and heart for the best interests of his country. In the opinion of Mommsen, *Hist. of Rome*, iii. (1898). 531 f., he was essentially the successor of Drusus, a reformer in the interest of the senate, yet led by the force of circumstances to adopt revolutionary methods. Cf. also Lange, *Röm. Alt.* iii. 121–5; Long, *Rom. Rep.* II. ch. xvii; Neumann, *Gesch. Roms*, i. 507–17.

ally checked by reducing the legislative power of the assemblies to the harmless function of ratifying decrees of the senate. This result Sulla and Pompeius aimed to reach by renewing an ancient law[1] that no measure should ever again be brought before the people which had not been previously considered and agreed to by the senate.[2] A closely related law of the same consuls ordered that "the voting should not be by tribes but by centuries, as King Tullius had ordained."[3] This statement has often been interpreted to signify the restoration of the earlier form of comitia centuriata. But it seems most improbable that, on the point of setting out for a long, distant war, Sulla should think of restoring an organization which had been obsolete for more than a century and a half, and which could have been known to none but antiquarians. With his clear, practical intelligence he could not have failed to see the insuperable difficulty of restoring the ancient definitions of the classes in terms of iugera or even on the later basis of the libral *as*.[4] Furthermore no censors were then at hand to undertake the work, and it was altogether unlikely that during his absence any could be elected who would be willing to apply themselves to the revitalization of the antique mummy. Such a measure, too, as Meyer[5] has pointed out, would place the control of the assembly in the hands, not of the senate, but of the knights, his mortal enemies. It is far more reasonable to suppose that this act transferred the function of ratifying laws from the tribal to the centuriate comitia, to restore the arrangement supposed to have been introduced by Servius Tullius.[6] If this reasoning is

[1] P. 277, 313 f.

[2] App. *B. C.* i. 59. 266: Εἰσηγοῦντό τε μηδὲν ἔτι ἀπροβούλευτον ἐς τὸν δῆμον ἐσφέρεσθαι, νενομισμένον μὲν οὕτω καὶ πάλαι, παραλελυμένον δ' ἐκ πολλοῦ.

[3] Ibid.: Εἰσηγοῦντο . . . καὶ τὰς χειροτονίας μὴ κατὰ φυλάς, ἀλλὰ κατὰ λόχους, ὡς Τύλλιος βασιλεὺς ἔταξε γίνεσθαι.

[4] P. 86.

[5] In *Hermes*, xxxiii (1898). 652.

[6] This view is held by Sunden, *De trib. pot. imm.* (1897) 21 ff.; Meyer, ibid. 652–4; Vassis, in *Athena*, xii (1900). 54–7. Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1537, supposes that elections simply were thereby transferred to the comitia centuriata; but the word χειροτονίαι used by Appian, though often denoting elections (as in *B. C.* i. 14. 58–60; 15. 66; 28. 127, where the meaning is easily derived from the context), includes also voting on laws, as in *B. C.* i. 23. 100; 55. 244. Had he meant elections, he would here have written ἀρχαιρεσία (cf. i. 1. 1; 44. 196), as otherwise the meaning would have been doubtful. The view represented by Fröhlich,

correct, the act under consideration totally abolished the legislative initiative of the tribunes.[1] The other Cornelian-Pompeian law mentioned by Appian must have applied, accordingly, not to the tribunate but to the other magistracies.[2] The current interpretation, which involves the theory of a return to the original centuriate system, requires further examination. Its chief basis is the statement of Appian that no law should be brought before the πλῆθος which had not been previously considered in the senate. It is commonly assumed that he uses δῆμος to designate the whole citizen body, and πλῆθος the exclusively plebeian assembly under tribunician presidency. A study of his usage, however, proves that he makes no such discrimination. Δῆμος is ordinarily the people in general, especially as distinguished from the βουλή,[3] parallel to Livy's common distinction between plebs and senatus. It is the technical term for the plebs in their tribal comitia under tribunician presidency.[4] Rarely it signifies the state[5] with reference to the interest of the

moreover, would in no way explain the passage, nor was it likely that Sulla would leave to the tribes the ratification of laws but deprive them of the politically unimportant right to elect minor officials.

[1] Appian's words πολλά τε ἄλλα τῆς τῶν δημάρχων ἀρχῆς . . . περιελόντες (i. 59. 267) imply an extensive curtailment of the tribunician power not definitely specified. The statement of Livy, ep. lxxxix, that Sulla afterward (82) deprived the tribunes of all legislative power (p. 413 below) is not true of his dictatorial law-giving, but belongs properly to the year under consideration.

[2] Lengle (*Sull. Verf.* 10) argues, on the contrary, that the measure could be intended for the tribunes only, because, as he supposes, a patrician magistrate always consulted the senate concerning his legislative proposals. But Lengle has reckoned without the facts. An examination of the sources will show that from the time of the dictator Publilius Philo (Livy viii. 12. 14) to the time of the dictator Julius Caesar (Dio Cass. xxxviii. 3 f.; Plut. *Caes.* 14; App. *B. C.* ii. 10) patrician magistrates occasionally brought rogations before the comitia without the senatorial sanction. But it is possible that in speaking of "an ancient law long disused" (p. 406, n. 2) Appian may wrongly have had in mind the pre-Hortensian restriction on the plebiscite; p. 277, n. 4.

[3] *B. C.* i. 1. 1, 2, 3; 19. 81; 20. 83; 22. 91; 29. 132 (city people); 30. 136; 32. 143; 33. 147; 35. 155; 36. 162; 38. 169; 100. 469. Δημόται always means plebeians; i. 24. 106; 25. 109; 33. 146; 100. 469. Sometimes δῆμος is exactly equivalent to πλῆθος, multitude, as in i. 26. 119.

[4] *B. C.* i. 12. 51; 13. 55; 20. 83; 21. 90; 22. 92; 23. 101; 25. 107; 28. 128; 29. 131.

[5] *B. C.* i. 27. 122. In 33. 148 it applies to the judicial contio preliminary to the comitia centuriata.

people. Πλῆθος, on the other hand, ordinarily denotes the masses, multitude, rabble,[1] including the crowd gathered not only in a tribunician assembly[2] but also in the ἐκκλησία (here meaning contio) under the presidency of a patrician magistrate.[3] But πλῆθος is never technically or officially used to denote any assembly either of the populus or of the plebs. In the passage under discussion Appian's statement of the Cornelian-Pompeian law is εἰσηγοῦντό τε μηδὲν ἔτι ἀπροβούλευτον ἐς τὸν δῆμον ἐσφέρεσθαι, in which he uses δῆμος according to his custom to designate the popular assembly without specifying whether it is of the populus or of the plebs. In commenting on it he substitutes πλῆθος for δῆμος for the purpose, not of defining the assembly as tribunician, but of contrasting the masses in the assembly with the nobles in the senate: ἐς τὸ πλῆθος is substantially equivalent to ἐν τοῖς πένησι καὶ θρασυτάτοις used just below; Sulla wished nothing to be submitted to the masses in the comitia centuriata before it had been considered by the senate.

Appian[4] attributes to Sulla for this early date an attempt to increase the number of senators. "They (the consuls) enrolled three hundred nobles in the senate, which had been reduced in numbers and for that reason had come to be despised." He does not state, however, by what authority the consuls made this extraordinary adlectio; and it is in fact improbable that the senate had so dwindled. However that may be, the increase did not take permanent effect at this time.[5] Two other laws of these consuls are briefly mentioned: (1) for planting colonies,[6] of which nothing is known; (2) a lex unciaria.[7] The latter may have been a reduction of existing debts by one-twelfth of the principle, or a lowering of the maximal rate of interest to $8\frac{1}{3}$ per cent;[8] or it may have been a general insolvency law, providing for the payment of debts in instalments.[9] The chief value of these measures, even if we knew

[1] *B. C.* i. 13. 56; 25. 112; 32. 143; 54. 236; 104. 485.
[2] *B. C.* i. 12. 49; 32. 141.
[3] *B. C.* i. 101. 472.
[4] *B. C.* i. 59. 267.
[5] Willems, *Sén. Rom.* i. 402 f.
[6] Livy, ep. lxxvii.
[7] Fest. 375. 7.
[8] Cf. the law of 357; p. 297. See also Lange, *Röm. Alt.* iii. 126 f.; Herzog, *Röm. Staatsverf.* i. 502; Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1537.
[9] Billeter, *Gesch. d. Zinsfusses*, 155–7.

them in detail, would be to reveal the idea of their authors; for they were all repealed in the following year on the initiative of the consul L. Cornelius Cinna, probably by a comitial vote.[1]

Cinna then proposed (1) a renewal of the Sulpician plebiscite for the enrolment of the new citizens and the libertini among all the tribes,[2] (2) a recall of Marius and the other exiles.[3] Before these measures could be carried, the consul was driven from Rome and deposed from office by an act of the senate on the motion of Cn. Octavius, the other consul.[4] This is the only certain instance of the abrogation of the civil imperium known to the history of the republic. Cinna returned at the head of an army; and after taking forcible possession of the city, he carried his law concerning the exiles through the assembly either on his own motion or that of a tribune.[5] As the senate, reversing its earlier action,[6] had already legalized the Sulpician provision concerning the distribution of the libertini and the new citizens among the thirty-five tribes,[7] it was without reënactment carried into effect in 84.[8] The execution of this measure completed the political unification of Italy. Meantime L. Valerius Flaccus, consul suffectus in 86, to relieve the financial distress, passed a law which compelled creditors to satisfy themselves

[1] App. *B. C.* i. 73. 339. No mention is here made of the manner of repeal, but we may infer a comitial act from the public policy of Cinna. It seems probable that at this time, or after his return from exile, the Plautian judiciary law of 89 was also repealed; p. 402.

[2] Cic. *Phil.* viii. (3.) 7; Vell. ii. 20. 2 f.; Schol. Gronov. 410; Jul. Exuper. 4; App. *B. C.* i. 64. 287; Mommsen, *Röm. Staatsr.* iii. 180, 439; Münzer, in Pauly-Wissowa, *Real-Encycl.* iv. 1283.

[3] App. ibid.; Flor. ii. 9. 9 (iii. 21); (Aurel. Vict.) *Vir. Ill.* 69. 2.

[4] Livy, ep. lxxix; Vell. ii. 20. 3; App. *B. C.* i. 65. 296; (Aurel. Vict.) *Vir. Ill.* 69. 2; Plut. *Mar.* 41.

[5] Cinna is represented as the author by Vell. ii. 21. 6; Plut. *Mar.* 43; Dio Cass. Frag. 102. 8; whereas Appian, *B. C.* i. 70. 324, mentions tribunes. Cf. Diod. xxxviii, xxxix. 1–4; Münzer, in Pauly-Wissowa, *Real-Encycl.* iv. 1285; Long, *Rom. Rep.* ii. 244.

[6] P. 405.

[7] Livy, ep. lxxxiv: "Novis civibus senatus consulto suffragium datum est."

[8] P. 58 above. Lange, *Röm. Alt.* iii. 141, unnecessarily assumes a consular lex Papiria for the purpose.

In the year 87 the propretorian imperium of Appius Claudius Pulcher, father of the famous tribune of 58, was abrogated by a lex of an unknown tribune. The ground was a refusal to obey the summons of the tribune in question; Cic. *Dom.* 31. 83; Münzer, in Pauly-Wissowa, *Real-Encycl.* iii. 2848 f.

with one-fourth of the amount due.[1] In 83 M. Junius Brutus, tribune of the plebs, proposed and carried, as a milder measure of relief, a law for the colonization of Capua.[2]

Schulze, C. F., *Volksversammlungen der Römer*, 110–26; Peter, C., *Epochen der Verfassungsgesch. der röm. Republik*, 141–65; *Geschichte Roms*, bks. VI, VII. chs. i–iv; Ihne, W., *History of Rome*, bk. VII. chs. ii–xix; *Researches into the History of the Roman Constitution*, 161 ff.; Long, G., *Decline of the Roman Republic*, I. ch. x–II. ch. xxiv; Lange, *Röm. Altertümer*, iii. 1–146, and see indices s. the various laws; *Die promulgatio trinum nundinum, die lex Caecilia Didia und nochmals die lex Pupia*, in *Kleine Schriften*, ii. 214–70; Mommsen, Th., *History of Rome*, bk. iv; *Röm. Staatsr.* see index s. the various laws; *Ueber das thorische Ackergesetz*, in *Ber. sächs. Gesellsch. d. Wiss.* i (1849). 89–101; Neumann, C., *Geschichte Roms*, I. chs. ii–v; Ferrero, *Greatness and Decline of Rome*, I. chs. ii–v; Greenidge, A. H. J., *History of Rome*, i; *The Lex Sempronia and the Banishment of Cicero*, in *Class. Rev.* vii (1893). 347 f.; Greenidge and Clay, *Sources for Roman History, 133–70 B.C.*; Strachan-Davidson, J. L., ed. Appian, *Civil Wars*, bk. i, with notes; Weber, M., *Röm. Agrargeschichte*, 151 ff.; Dreyfus, *Lois agr. sous la république Rom.* 77–196; Voigt, M., *Ueber die staatsrechtliche Possessio und den Ager compascuus*, in *Abhdl. sächs. Gesellsch. d. Wiss.* x (1880). 221–72; *Ueber das röm. System der Wege im alten Italien*, in *Ber. sächs. Gesellsch. d. Wiss.* xxiv (1872). 29–90; Babelon, E., *Monnaies de la république Rom.* i. 69–79; Billeter, G., *Geschichte des Zinsfusses im griechisch-röm. Altertum*, 155 ff.; Fowler, W. W., *Notes on Gaius Gracchus*, in *Eng. Hist. Rev.* xx (1905). 209–27, 417–33; *Gaius Gracchus and the Senate*, in *Class. Rev.* x (1896). 278–80; Pöhlmann, R., *Zur Geschichte der Gracchen*, in *Sitzb. d. bayer. Akad. d. Wiss.* 1907. 443–93; Oman, C., *Seven Roman Statesmen*, i–iv; Huschke, Ph. E., *Die lex Sempronia und ihr Verhältniss zur lex Acilia repetundarum*, in *Zeitschr. f. Rechtsgesch.* v. (1866). 46–84; Rudorff, A. E., *Ad legem Aciliam de pecuniis repentundis latam anno ab urbe condita 631 vel 632*, in *Philol. u. hist. Abhdl. d. k. Akad. d. Wiss. zu Berlin*, 1861. 411–553; Kruger-Brissaud, *Hist. d. sources d. droit Rom.* 94 f.; Hegewisch, D. H., *Geschichte der gracchischen Unruhen*; Ahren, E. A. J., *Die drei Volkstribunen Ti. Gracchus, M. Drusus, und P. Sulpicius*; Nitzsch, K. W., *Die Gracchen und ihre nächsten Vorgänger*, bks. iii, iv; Blasel, J., *Die Motiven der Gesetzgebung des C. Gracchus*; Callegari, E., *La legislazione di Caio Gracco*; Meyer, E., *Untersuchungen zur Geschichte der Gracchen*, in *Festschriften . . . der vereinigten Friedrichs-Universität*, etc. 1894. *Philos. Fak.* 79–109; controverted by Schwartz, E., in *Göttingische gelehrte Anzeigen*, clviii (1896). 792–811; Hesky, R., *Anmerkungen zur lex Acilia repetundarum*, in *Wiener Studien*, xxv (1903). 272–87; Brassloff, S., *Beiträge zur Erläuterung der lex Acilia repetundarum*,

[1] Vell. ii. 23. 2; Cic. *Font.* i. 1; *Quinct.* 4. 17; Sall. *Cat.* 33; Mommsen, *Röm. Münzwesen*, 385; Long, *Rom. Rep.* ii. 251; Ferrero, *Rome*, i. 92.

[2] Cic. *Leg. Agr.* ii. 33. 89; 34. 92; 36. 98.

ibid. xxvi. 106–17; Hagge, *Einige Bemerkungen über die lex Servilia repetundarum*; Mühl, F. V., *De L. Appuleio Saturnino tribuno plebis*; Pappritz, R., *Marius und Sulla*; Vassis, S., Ζητήματα Ῥωμαϊκά, in *Athena*, xii (1900). 54–7 (on the Cornelian-Pompeian laws of 88 concerning the assemblies); Lengle, J., *Sullanische Verfassung*; articles in Pauly-Wissowa, *Real-Encycl.* i. 426–8: Adsignatio (Kubitschek); 256: (M'.) Acilius Glabrio (Klebs); 584–8: M. Aemilius Scaurus (Klebs); 780–93 Ager (idem); ii. 261–9: Appuleius (Klebs); 2848 f.: Bantia (Hülsen); iii. 1414–21: Calumnia (Hitzig); 1441 f.: Campanus Ager (Kubitschek); iv. 195 f.: C. Coelius Caldus (Münzer); 510–88: Coloniae (Kornemann); v. 407–10: T. Didius (Münzer); articles in Daremberg et Saglio, *Dict.* i. 133–8: Ager Publicus (Humbert); 1301–21: Colonies Romains (Lenormant); ii. 1346–8: Frumentariae leges (Humbert).

CHAPTER XVII

COMITIAL LEGISLATION

From Sulla to the End of the Republic, 82 to about 30

I. *The Cornelian Reaction*

82–70

In November, 82, after destroying his political enemies by war and proscription, Sulla was ready to begin the work of restoring the aristocratic constitution. As both consuls, Cn. Papirius Carbo and C. Marius the younger,[1] were dead, and as Sulla desired above all things to give his legislation a constitutional basis, he advised the senate to appoint an interrex. The choice fell on L. Valerius Flaccus, princeps senatus, a moderate in politics. Thereupon Sulla withdrew from Rome, leaving the civil authorities free in appearance to act at their discretion. In reality he had determined to retain control of affairs; and accordingly he wrote to Valerius advising the appointment of a dictator, not for a fixed time but till the general unrest should be quieted. He suggested himself as a suitable person for the place. Valerius obediently proposed and carried a law through the comitia centuriata, (1) which made Sulla dictator rei publicae constituendae for an indefinite time with absolute power over the lives and property of the citizens,[2] (2) which legalized all his past acts, both as consul and as proconsul,[3] including his arrangements in Asia as well as his proscriptions and confiscations.[4] He returned to the city, appointed Valerius his magister

[1] *CIL.* i². p. 154.

[2] App. *B. C.* i. 3, 98 f.; Plut. *Sull.* 33; Vell. ii. 28. 2; Oros. v. 21. 12; Diod. xxxviii, xxxix. 15; cf. Mommsen, *Röm. Staatsr.* ii. 703 f. The office had been disused for a hundred and twenty years; Plut. ibid.; Vell. ibid.; *CIL.* i². p. 23. On the form of comitia, see p. 236.

[3] App. *B. C.* i. 97. 451; Cic. *Leg. Agr.* iii. 2. 5.

[4] Cic. *Rosc. Am.* 43. 126; Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1556; Drumann-Gröbe, *Gesch. Roms*, ii. 404. From this Ciceronian passage it is necessary

equitum,[1] and took to himself twenty-four lictors in addition to a less formal guard of servants and friends.[2] Without delay he began the promulgation of laws, which undoubtedly he had long been planning. They are here grouped according to subject, with an occasional reference to their chronological relation.

First he applied himself to curbing the power of the tribunate, an institution in which centred the strength of the democracy. A statute for that purpose he must have felt compelled to draw up and pass before the next tribunician election. Instead of renewing his earlier law, however, for absolutely depriving the tribunes of initiative in legislation,[3] he enacted simply that the previous consent of the senate should be necessary to bills brought by them before the tribes.[4] By another article of this law he limited the right of tribunes to

to infer that the Valerian law contained an article similar to the later Cornelian lex de proscriptione; p. 421 below.

[1] *CIL.* i². p. 27.

[2] Livy, ep. lxxxix; App. *B. C.* i. 100. 465; Sall. *Hist.* i. 55. 2.

[3] P. 406 f.

[4] Livy, ep. lxxxix: "Tribunorum plebis potestatem minuit, et omne ius legum ferendarum ademit." We should infer from this statement, which is the sole authority for the view it presents, that he absolutely deprived the tribunes of legislative initiative, were it not that under his constitutional arrangements they actually proposed laws de senatus sententia; *CIL.* i. 204 (year 71); Bruns, *Font. iur.* p. 94; Dessau, *Inscr. Lat.* i. p. 11; Lange, *Röm. Alt.* iii. 154; Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1559; Mommsen, *Röm. Staatsr.* iii. 158; Lengle, *Sull. Verf.* 11; Drumann-Gröbe, *Gesch. Roms*, i. 390 f., 411. The conference between Sulla and Scipio, mentioned by Cic. *Phil.* xii. 11. 27, referred to this arrangement. Sunden, *De rib. pot. imm.* 10 ff. (cf. Long, *Rom. Rep.* ii. 399 ff.), holding that Sulla abolished the right of the tribunes to propose laws, refuses to accept 71 as the date of the epigraphic lex above mentioned.

It seems probable (Lange, *Röm. Alt.* iii. 175; Mommsen, *Röm. Strafr.* 654, n. 2), though it is not certain (Greenidge, *Leg. Proced.* 424, 430 f.), that the lex Plautia de vi was proposed by a tribune of 78 or 77 as the agent of Q. Lutatius Catulus, proconsul; Sall. *Cat.* 31; Schol. Bob. 368; Cic. *Cael.* 29. 70; p. 424 below. Probably the lex Plautia which recalled from exile L. Cornelius Cinna, brother-in-law of Caesar, and others who, having shared in the insurrection of Lepidus, had gone over to Sertorius, was a plebiscite de senatus sententia of 73; Suet. *Caes.* 5; Gell. xiii. 3. 5; Val. Max. vii. 7. 6; Dio Cass. xliv. 47. 4; Lange, *Röm. Alt.* iii. 185; Maurembrecher, Sall. *Hist. Proleg.* 78; Münzer, in Pauly-Wissowa, *Real-Encycl.* iv. 1287. Others assign the measure to 70; cf. Long, *Rom. Rep.* iii. 53. For other laws, see. p. 424.

The statement of Livy's epitomator concerning the lex Cornelia de tribunicia potestate would apply more accurately to the Cornelian-Pompeian law of 88; p. 406.

address the people in contiones.[1] The range of their intercession was also greatly limited.[2] Their function of bringing prosecutions before the people underwent restriction not only through the laws affecting the quaestiones but also by special enactment;[3] for had they retained their unlimited right to prosecute, they could at once have regained all their other power.[4] Little was left them but their original auxilii latio adversus imperium.[5] Finally the office was made unattractive to the ambitious by the provision that those who held it were thereby disqualified for other magistracies.[6] By these measures the most vital and powerful institution in the state was reduced to a shadow without substance.[7] The return to conditions preceding the Hortensian legislation, in some respects even the Decemviral legislation, was, as Fröhlich[8] remarks, a backward step such as finds few parallels in history.

[1] From Cic. *Cluent.* 40. 110 (cf. Long, *Rom. Rep.* ii. 400) we should infer that under the Cornelian government no tribunician contio was held; but we know that this is not true. In 76 a contio was summoned by L. Sicinius, tribune of the plebs; *Orat.* of Licinius Macer, in Sall. *Hist.* iii. 48. 8: "L. Sicinius primus de potestate tribunicia loqui ausus mussantibus vobis"; cf. Pseud. Ascon. 103; Plut. *Caes.* 7; Cic. *Brut.* 60. 216 f. In 74 the tribune Quinctius held contiones; Cic. *Cluent.* 34. 93; Sall. *Hist.* ibid. § 11. The oration of Licinius Macer, quoted by Sallust, *Hist.* iii. 48, is a tribunician harangue. Finally in 71 the tribune Palicanus held a contio outside the city that Pompey might attend; p. 426.

[2] Cic. *Verr.* II. i. 60. 155: Q. Opimius was prosecuted in a finable action on the ground that as tribune in 75 (Pseud. Ascon. 200) he had interceded in violation of a Cornelian law, which must have fixed the fine. The statement of Caesar, *B. C.* i. 5. 1; 7. 3, that Sulla left the tribunes the right of intercession proves no more than that he did not wholly abolish it. Cf. further Sunden, *De trib. pot. imm.* 4; Drumann-Gröbe, *Gesch. Roms*, ii. 411, n. 10.

[3] Cic. *Verr.* i. 13. 38: "Sublata populi Romani in unum quemque vestrum potestate."

[4] P. 245, 266, 315.

[5] Cic. *Leg.* iii. 9. 22.

[6] App. *B. C.* i. 100. 467; Ascon. 78 (repealed by Cotta); Pseud. Ascon. 200.

[7] Vell. ii. 30. 4; Dion. Hal. v. 77. 5; Sall. *Hist.* i. 55. 23; iii. 48. 3; Pseud. Ascon. 102.

The following sources assume more or less definitely an abolition of the tribunicia potestas; Sall. *Hist.* i. 55. 23; 77. 14; iii. 48. 1; *Cat.* 38. 1; Plut. *Pomp.* 21; Pseud. Ascon. 102. The following speak of a limitation; Caes. *B. C.* i. 5. 1; 7. 3; Livy, ep. lxxxix; Dion. Hal. v. 77. 5; Vell. ii. 30. 4; Suet. *Caes.* 5; (Aurel. Vict.) *Vir. Ill.* 75. 11; App. *B. C.* ii. 29. 113. Tacitus, *Ann.* iii. 27, is non-committal. In general on the lex de tribunicia potestate, see Lange, *Röm. Alt.* iii. 153 f.; Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1559; Drumann-Gröbe, *Gesch. Roms*, ii. 410 ff.; Lengle, *Sull. Verf.* 10–16; Sunden, *De trib. pot. imm.*

[8] In Pauly-Wissowa, *Real-Encycl.* iv. 1559.

About a year[1] after limiting the power of the tribunes Sulla proceeded to regulate the other offices through his lex de magistratibus, 81. This statute, making use of the principle contained in the lex Villia annalis,[2] prescribed (1) that no one could be consul before he had been praetor or praetor before he had been quaestor,[3] (2) that a space of two years should intervene between the holding of consecutive offices.[4] (3) The minimal age of the quaestor it fixed at thirty-seven.[5] The fortieth year was therefore the age for the praetorship and the forty-third for the office of consul. The aedileship, while bringing the holder a positive advantage for his future career, was never an essential step to a higher place. But in case this office was taken, the biennial interval had to be observed.[6] The quaestorship Sulla made the sole avenue to the senate, so as to dispense with the revision of the list by the censors.[7] The statute of 151, forbidding reëlection to the consulship,[8] he repealed, and substituted for it the article of the Genucian plebiscite of 442[9] which fixed an interval of ten years between the expiration of any office and reëlection to the same.[10] He increased the number of quaestors, at this time certainly more than eight,[11] to twenty, with

[1] The law concerning the quaestors was preceded by the judiciary statute (Tac. *Ann.* xi. 22), which must have been enacted near the end of 81, for the senators remained ten years (80–70) in control of the courts; Cic. *Verr.* i. 13. 37.

[2] P. 347. The relation of this Cornelian provision to the lex Villia is not more definitely known.

[3] App. *B. C.* i. 100. 466; cf. 121. 560.

[4] Cf. Mommsen, *Röm. Staatsr.* i. 529.

[5] In the thirty-sixth year of his age Pompey was not yet qualified for the quaestorship; Cic. *Imp. Pomp.* 21. 62. Cicero, who was consul in his forty-third year, states that he obtained the office at the earliest legal age; *Leg. Agr.* ii. 2. 3. An interval of two years between successive offices would place the quaestorship in the thirty-seventh year; cf. Mommsen, *Röm. Staatsr.* i. 527, 569; Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1560; but soon after Sulla it came about, probably through further legislation, that the office was often filled in the thirty-first year; Mommsen, ibid. 570 ff.

[6] Cic. *Dom.* 43. 112; *Fam.* x. 25. 2; 26. 2 f.

[7] Tac. *Ann.* xi. 22; cf. Fröhlich, ibid. iv. 1560.

[8] P. 348.

[9] P. 298.

[10] App. *B. C.* i. 100. 466; cf. Cic. *Leg.* iii. 3. 9; Caes. *B. C.* i. 32; Dio Cass. xl. 51. 2.

[11] P. 332. There were probably twelve; Lange, *Röm. Alt.* iii. 163; Mommsen, *Röm. Staatsr.* i. 543.

the object not only of supplying an administrative need but also of creating the required number of senators.[1] It was necessary also to raise the number of praetors from six to eight in order to provide presidents for the new quaestiones perpetuae.[2]

The reforms above mentioned, together with the doubling of the number of senators to be considered below, naturally led to the enlargement of the chief sacerdotal colleges. The augurs and pontiffs were increased from nine to fifteen and the decemviri sacris faciundis were made quindecemviri.[3] Another measure, which seems to have been an article of the same act, repealed the Domitian lex de sacerdotiis,[4] and thus restored to these colleges, and at the same time to the epulones, their right of filling vacancies by coöptation,[5] leaving to the people the function only of electing the head of the pontifical college from among the members.[6] As the object of the first article was evidently to provide places for some of the new magistrates and

[1] Tac. *Ann.* xi. 22: "Lege Sullae viginti creati supplendo senatui." The eighth chapter of this law concerning the twenty quaestors is preserved in an inscription; *CIL.* i. 202; Bruns, *Font. Iur.* p. 90; Girard, *Textes*, p. 64. It regulates the qualifications, appointment, and pay of the apparitores of the quaestors. An important fact derived from the praescriptio is that the law was adopted in the tribal assembly. Since in the case of one law the centuriate assembly is mentioned as if exceptional (p. 422), we may infer that most of Sulla's enactments were tribal. On the apparitores, see Mommsen, in *Rhein. Mus.* N. F. vi (1846). 1–57; *Röm. Staatsr.* i. 332–46; Habel, in Pauly-Wissowa, *Real-Encycl.* ii. 191–4; Keil, J., in *Wiener Studien*, xxiv (1902). 548–51.

[2] Pomponius, in *Dig.* i. 2. 2. 32, wrongly says to ten — a number reached by the legislation of Caesar; Dio Cass. xlii. 51. 3; p. 454 below. On the relation of the praetors to the courts, see p. 420.

[3] Livy, ep. lxxxix, who connects it closely with the increase in the number of senators, placing it thus among his earlier measures; (Aurel. Vict.) *Vir. Ill.* 75. 11; Servius, *in Aen.* vi. 73; cf. Tac. *Ann.* vi. 12; Lange, *Röm. Alt.* iii. 157; Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1559 f.; Lengle, *Sull. Verf.* 1–9. That the increase in the last-named college was due to Sulla seems certain, though it is nowhere stated. It is possible, too, that the increase of the epulones from three to seven was his work; Lengle, ibid. 2.

[4] P. 391.

[5] Livy, ep. lxxxix; Dio Cass. xxxvii. 37. 1; Pseud. Ascon. 102; wrongly Plut. *Caes.* 1; Serv. *in Aen.* vi. 73; cf. Lange, *Röm. Alt.* iii. 157.

[6] Cic. *Leg. Agr.* ii. 7. 18; Lange, ibid. The Servilian agrarian rogation, 63 (p. 435 below), drawn up before the enactment of the Atian plebiscite of that year which restored the election of sacerdotes, assumes that the comitia pontificis maximi were at the time in use. Most authorities, as Wissowa, *Relig. u. Kult. d. Röm.* 418; Drumann-Gröbe, *Gesch. Roms*, iii. 156; Mommsen, *Röm. Staatsr.* ii. 30, have failed to notice this important fact.

senators,[1] the coöptation doubtless immediately followed the enactment of the law.

In increasing the number of praetors to eight[2] Sulla provided that during their year of office they were to remain in the city and devote their whole time to the administration of justice. After the expiration of their term they were to take upon themselves as propraetors the command of provinces. In like manner the consuls were to remain in Italy during their term, in the ordinary course of events to give their entire attention to the affairs of peace; only after they had retired from office were they expected as proconsuls to govern provinces. In brief, Sulla by law established an absolute distinction between the civil magistrate and the military promagistrate.[3] The lex de provinciis ordinandis[4] recognized the right of the senate to determine which provinces should be consular and which pretorian in the way provided for by the Sempronian law on this subject.[5] The Cornelian statute did not, however, any more than the Sempronian, forbid the assignment of a province to a promagistrate by popular vote; and it recognized the right of the senate to create promagistracies.[6] But it established the rule (1) that the two consuls should receive for a year of promagisterial imperium the provinces declared to be consular; and that they should either agree as to which each should take or cast lots for them;[7] (2) that the senate should annually assign the eight retiring praetors to the remaining provinces, also for a year of promagistracy.[8] The same law directed that the promagistrate, who had received the imperium in legal form, should retain it till his return to the city and the celebration of his triumph,[9] provided he merited one. To avoid conflicts between retiring and incoming governors it ordained that the former should leave the province within thirty days after the latter had entered it.[10] The law further contained the definite regulation of the supplies and honors granted the legati by the pro-

[1] P. 106, n. 10.

[2] P. 416.

[3] Mommsen, *Röm. Staatsr.* ii. 200; Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1560.

[4] Lange, *Röm. Alt.* iii. 164.

[5] P. 381.

[6] Lange, *Röm. Alt.* ii. 705.

[7] Cic. *Fam.* i. 9. 25.

[8] Cf. Cic. *Fam.* viii. 8. 8.

[9] Cic. *Fam.* i. 9. 25. On the relation of the Cornelian legislation to the curiate law, see p. 193, 199.

[10] Cic. *Fam.* iii. 6. 3, 6.

vincials.[1] The tendency of Sulla's legislation thus far considered was to weaken the civil functionaries (1) by restricting the tribunician initiative, (2) by increasing the number of quaestors and praetors, (3) by depriving the higher civil magistrates of the military imperium. The last-mentioned loss was in some measure an advantage to the senate but in a far higher degree to the promagistrates, who from this time began to overshadow the republic.

The power taken from the tribunes necessarily went to the senate, to restore to it the full control of legislation which it had possessed before the enactment of the Hortensian statute. Under the reformed constitution it was to be supreme. As it had dwindled during the recent civil war and proscription,[2] and as the performance of jury service, which Sulla was restoring to its members, required a large number of men, he added three hundred, mostly from the equestrian rank, but including some centurions and other insignificant persons who were likely to do his bidding.[3] Appian [4] states that these new senators were elected by the tribes, possibly meaning the tribal comitia.[5] But as that process of selection would have required an enormous length of time, it is far more probable that each tribe had the privilege of choosing a definite number, perhaps nine, after the precedent of the lex Plautia iudiciaria.[6] This addition would raise the number to about four hundred and fifty. As the normal membership from Sulla to Caesar was about six hundred,[7] we may assume either that, independently of the extraordinary adlectio by the tribes, he made the usual censorial enrolment of the recently retired magistrates, or that he left it to time to fill up the senate to the desired number by the annual admission of retired quaestors.[8] Henceforth it was to be recruited automat-

[1] Cic. *Fam.* iii. 10. 6; *Q. Fr.* i. 1. 9, 26.

[2] App. *B. C.* i. 103. 482; Oros. v. 22. 4; Eutrop. v. 9. Willems, *Sén. Rom.* i. 404, calculates that the number was reduced to about a hundred and fifty.

[3] Livy, ep. lxxxix; cf. Cic. *Rosc. Am.* 3. 8; Dion. Hal. v. 77. 5; Sall. *Cat.* 37.

[4] *B. C.* i. 100. 468. [5] Cf. Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1559.

[6] P. 402. The second view, which seems more reasonable, is held by Lange, *Röm. Alt.* iii. 156.

[7] No authority gives this number, which however may be deduced from well-known facts; Willems, *Sén. Rom.* i. 405 f.

[8] Willems, ibid. 406 f.

ically by this process, without any action on the part of the censors, who were thus deprived of the only important function remaining to them.[1] Closely connected with the increase in membership is the lex iudiciaria,[2] which restored the quaestiones to the senators.[3] It was enacted near the end of 81, but prior to the increase in the number of quaestors.[4] Before this act the courts had remained under the control of the knights in spite of the lex Plautia of 89, which seems not to have continued long in force.[5]

In the reorganization of the criminal courts (year 81) Sulla passed criminal laws, in which he regulated the procedure of the existing courts and created new quaestiones perpetuae.[6] His reform increased the number to seven, four of which were concerned almost wholly with maladministration of office: (1) quaestio repetundarum, extortion,[7] (2) quaestio ambitus, bribery in elections,[8] (3) quaestio peculatus, misappropriation of public funds[9] and sacrilege,[10] (4) quaestio maiestatis, injury to the majesty of the Roman name, of which a private person as well as a magistrate might be guilty.[11] The three following were concerned with common crimes: (5) quaestio inter sicarios et

[1] Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1560.

[2] Lange, *Röm. Alt.* iii. 156.

[3] Vell. ii. 32. 3; Cic. *Verr.* i. 13. 37 f.; Pseud. Ascon. 99, 102, 103, 145, 149, 161; Schol. Gronov. 384, 426; Greenidge, *Leg. Proced.* 436 ff.; Long, *Rom. Rep.* ii. 419 ff.; Wilmanns, in *Rhein. Mus.* N. F. xix (1864). 528.

[4] Tac. *Ann.* xi. 22: "Lege Sullae viginti creati (quaestores) supplendo senatui, cui iudicia tradiderat." [5] P. 402. [6] *Dig.* i. 2. 2. 32.

[7] Cic. *Rab. Post.* 4. 9. It took the place of the lex Servilia of 111; p. 393.

[8] Schol. Bob. 361. From Plut. *Mar.* 5 it seems evident that a quaestio de ambitu existed as early as 116; Greenidge, *Leg. Proced.* 422, n. 3; Lengle, *Sull. Verf.* 21 f., who has collected the cases de ambitu anterior to Sulla; Lange, *Röm. Alt.* ii. 665; Herzog, *Röm. Staatsverf.* i. 521; Lohse, *De quaestionum perpetuarum origine, praesidibus, consiliis.*

[9] Cic. *Verr.* i. 13. 39; II. i. 4. 11 f.; iii. 36. 83; *Cluent.* 53. 147; cf. *Mur.* 20. 42; Lange, *Röm. Alt.* ii. 665; iii. 166. The trial of Pompeius Magnus in 86 for misappropriation of booty by his father in 89 seems to have come before a quaestio de peculatu; Cic. *Brut.* 64. 230; Plut. *Pomp.* 4; Lengle, ibid. 40 f. If this supposition is right, the court must have existed before Sulla. A Cornelian law on the subject is not expressly mentioned but may be reasonably assumed.

[10] Mommsen, *Röm. Strafr.* 203.

[11] Cic. *Pis.* 21. 50; Ascon. 59; cf. Cic. *Fam.* iii. 11. 2; *Cluent.* 35. 97; *Verr.* II. i. 5. 12. This law took the place of the lex Appuleia, probably of 100; cf. Lange, *Röm. Alt.* iii. 165; Greenidge, *Leg. Proced.* 423, 507.

veneficos, assassination, poisoning, and arson,[1] (6) quaestio de falsis, counterfeiting and falsification of testaments and other forgery,[2] (7) quaestio iniuriarum, acute personal violence, housebreaking, and probably defamation of character.[3] These laws concerning quaestiones contained provisions for granting the accused the privilege of deciding whether the vote should be oral or by ballot,[4] and they directed that the order of voting should be determined by lot.[5] The first of these two articles aimed to make the jurors individually responsible, and the second to prevent influential men from prejudicing the case by giving their opinions first.[6]

While the praetor urbanus and praetor peregrinus still busied themselves with civil jurisdiction, the six other praetors presided over these courts; but as the number was insufficient, past aediles were appointed to preside as iudices quaestionis. This arrangement was especially necessary for the quaestio inter sicarios, overburdened as it was with a variety of crimes.

As these courts were vested with the function of trying with-

[1] Cic. *Cluent.* 20. 55; 54. 148; 55. 151; 56. 154; Frag. A. ii. (*Var.*) 6; *Mil.* 4. 11; Tac. *Ann.* xiii. 44; Justin. *Inst.* iv. 18. 5 f.; *Dig.* xlviii. 8; Paul. *Sent.* v. 23. (Girard, *Textes*, p. 423).

[2] Cic. *Verr.* i. 42. 108; Paul. *Sent.* iv. 7; v. 25; *Dig.* xlviii. 10; Justin. *Inst.* iv. 18. 7; cf. Voigt, *Röm. Rechtsgesch.* i. 271 f.

[3] *Dig.* iii. 3. 42. 1; xlvii. 10. 5; 10. 37. 1; xlviii. 2. 12. 4; Paul. *Sent.* v. 4. 8; Justin. *Inst.* iv. 4. 8; Mommsen, *Röm. Strafr.* 203; Greenidge, *Leg. Proced.* 208, 423 f.; Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1561; Bruns, *Font. Iur.* 93. In the opinion of Lange, *Röm. Alt.* ii. 665; iii. 166, this lex did not establish a quaestio.

[4] Cic. *Cluent.* 20. 55; 27. 75; Greenidge, *Leg. Proced.* 442.

[5] Cic. *Cluent.* 28. 75.

[6] Greenidge, *Leg. Proced.* 442. On the Cornelian courts in general, see Long, *Rom. Rep.* ii. 420 ff.; Herzog, *Röm. Staatsverf.* i. 520 f.; Drumann-Gröbe, *Gesch. Roms*, ii. 413–6; Mommsen, *Röm. Strafr.* see index, s. Quaestio and the various crimes belonging thereto; *Röm. Staatsr.* ii. 200 f.; Lengle, *Sull. Verf.* 17–54; Lohse, *De quaestionum perpetuarum origine, praesidibus, consiliis;* Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 1561 f.

In Lange's opinion (*Röm. Alt.* ii. 665; iii. 166) there must have been a lex Cornelia de adulteriis et pudicitia, for it is doubtful whether Sulla's ordinances περὶ γάμων καὶ σωφροσύνης could have formed part of his lex de iniuriis; Plut. *Comp. Lys. et Sull.* 3; cf. *Dig.* xlviii. 5. 23. It seems to be demonstrated, however, by Voigt, in *Ber. sächs. Gesellsch. d. Wiss.* xlii (1890). 244–79, that all republican regulations of this offence, including the Cornelian, were sumptuary; cf. Cuq, in Daremberg et Saglio, *Dict.* iii. 1141. No quaestio accordingly was needed for the trial of the offence.

out appeal all crimes, including those formerly brought before the comitia, the result was that the people were practically, though not constitutionally, deprived of their judicial power. The tendency of the Cornelian legislation in this as in other respects was oligarchic.

Among the statutes passed in the winter or early spring of 81 we must place the lex de proscriptione,[1] which added certain regulations to those of the Valerian law for the creation of the Cornelian dictatorship,[2] and which Sulla considered essential to the execution of his policy and the maintenance of its results. The Cornelian statute concerning proscription forbade the giving of relief or aid to a proscribed person;[3] it legalized the previous slayings and confiscations of property,[4] and provided also that the estates not only of the proscribed but also of enemies who had fallen in battle should be sold for the benefit of the treasury.[5] It excepted from the sale ten thousand of the youngest and strongest slaves, who were given their freedom; and it debarred from the ius honorum the sons, grandsons, and other descendants of the proscribed,[6] with a view to keeping from them the means of vengeance; and lastly, it fixed the date for closing the proscriptions at June 1, 81.[7]

During the winter of 82–81 Sulla gave his attention not only to law-making but also to the sale of confiscated property and to the regulation of Italy. The latter work was carried out by the administrative power of the dictator through the destruction of the fortifications of rebellious communities, their punishment by fines and extraordinary taxes, and the confiscation of some of their lands, to be assigned to his discharged veterans.[8] The Cornelian agrarian laws,[9] which brought about these confiscations

[1] Lange, *Röm. Alt.* iii. 158.

[2] P. 412.

[3] Cic. *Verr.* II. i. 47. 123; Pseud. Ascon. 193.

[4] Suet. *Caes.* 11.

[5] Cic. *Rosc. Am.* 43. 125 f. Though Cicero says he does not know whether the law in question was the Valerian or Cornelian, he probably knew it was the latter, the terms of which he states: "Ut eorum bona veneant, qui proscripti sunt, . . . aut eorum, qui in adversariorum praesidiis occisi sunt."

[6] Livy lxxxix; Vell. ii. 28. 4; Sall. *Hist.* i. 55. 6; Plut. *Sull.* 31; *Cic.* 12; Dion. Hal. viii. 80. 2.

[7] Cic. *Rosc. Am.* 44. 128.

[8] App. *B. C.* i. 96. 100; Flor. ii. 9 (iii. 21); cf. Suet. *Ill. Gramm.* 11.

[9] Livy, ep. lxxxix; App. *B. C.* i. 100. 470; 104. 489; Sall. *Hist.* i. 55. 12; Cic. *Mur.* 24. 49: *Leg. Agr.* ii. 28. 78; iii. 2. 6 ff.; 3. 12; Gromat. p. 230 ff.

and assignments, seem to have been not acts of the comitia but dictatorial orders.[1] They must have been issued from time to time as occasion demanded, probably through the entire year 81.[2] The legions were kept together till after the triumph (January 27, 28 of the year 81)[3] and then disbanded, to be led off gradually to their lands. Some of the municipia to which soldiers were assigned, most obstinately Volaterrae and Nola, resisted their admission by force of arms. To punish these rebels Sulla carried through the comitia centuriata his lex de civitate Volaterranis adimenda,[4] which disfranchised not only Volaterrae but also other rebellious municipia.[5] Those who by this act were deprived of the citizenship received the so-called Latin rights of Ariminum.[6]

Among the regulations for the improvement of the finances, which he found in bad condition,[7] was his abolition of the distributions of grain.[8] Whether it was effected by a lex frumentaria or a dictatorial order cannot be determined.[9] The levy of taxes on Italian and transmarine communities [10] could be brought about by senatus consulta,[11] as the people had nothing to do with such matters. Credit had been shattered by the law of L. Valerius Flaccus concerning debts, 86,[12] which Sulla repealed by one of his own on the same subject, 81.[13]

In connection with the Circensian games which he celebrated in the autumn of 81, and which in honor of Victoria were thereafter repeated annually from October 26 to November 1,[14] Sulla

[1] Lange, *Röm. Alt.* iii. 159; cf. ii. 689; Drumann-Gröbe, *Gesch. Roms*, ii. 407 f.

[2] Lange, ibid. iii. 159. [3] *CIL.* i². p. 49. [4] Lange, ibid. iii. 161.

[5] Cic. *Dom.* 30. 79; Sall. *Hist.* i. 55. 12; cf. Pseud. Ascon. 102.

[6] Cic. *Caecin.* 35. 102.

[7] App. *B. C.* i. 102. 474; cf. Cic. *Leg. Agr.* ii. 14. 35.

[8] Sall. *Hist.* i. 55. 11. They were then being made according to the law of M. Octavius (p. 401), or if that was repealed by Cinna, according to the lex Sempronia of 123 (p. 372).

[9] Lange, *Röm. Alt.* ii. 693. The statement in iii. 161 is less exact.

[10] App. *B. C.* i. 102. 474. [11] Cic. *Off.* iii. 22. 87. [12] P. 409 f.

[13] Hence it was that T. Crispinus, quaestor in the following year, treated the Valerian law as no longer in force; Cic. *Font.* 15; Lange, ibid. iii. 162. To this date seems to belong the lex Cornelia de sponsu (Gaius iii. 124), which Poste, 359, reasonably assigns to the dictator.

[14] *CIL.* i². p. 333; Vell. ii. 27. 6; Cic. *Verr.* i. 10. 31; Pseud. Ascon. 150; Wissowa, *Relig. u. Kult. d. Röm.* 128.

must have passed a lex de ludis Victoriae instituendis.[1] Lastly came the sumptuary law, through which he attempted to regulate the manners and morals of the citizens.[2] It was the restoration, in a revised form, of the lex Licinia of 104,[3] which had been repealed by M. Duronius in 97.[4] The Cornelian statute permitted the expenditure of no more than three hundred sesterces for meals on the calends, nones, ides, ludi, and certain other holidays, and only thirty for ordinary meals; and it fixed the prices of various luxuries.[5] Another article of the same statute limited funeral expenses.[6] The author's object seems to have been to restore the morals and manners as well as the constitution and laws of the good old time before they were corrupted by the demagogues.

Sulla's legislation was substantially complete on January 1, 80, when he entered upon his second consulship with Q. Caecilius Metellus Pius as colleague.[7] Retiring into private life early in 79, he left the constitution to its fate. No better comment on its value could be offered than the history of its decline and overthrow in a single decade. Opposition began to manifest itself from the time of his abdication; and he was hardly in his grave when M. Aemilius Lepidus, consul in 78, promulgated bills for the abolition of some of the Cornelian statutes; but the opposition of his colleague, Q. Lutatius Catulus, and of the senate prevented their ratification.[8] The right of retired tribunes to

[1] Lange, *Röm. Alt.* ii. 675; iii. 162.

[2] Its existence is assumed for the year 80; Plut. *Sull.* 35.

[3] P. 388, n. 9. [4] Ibid.

[5] Gell. ii. 24. 11; Macrob. *Sat.* iii. 17. 11.

[6] Plut. *Sull.* 35. Here belongs also his regulation de adulteriis et pudicitia; p. 420, n. 6 above.

[7] *CIL.* i². p. 154. A proof that he completed his legislation in this year is the fact that he looked upon the following as a time of probation for his system (App. *B. C.* i. 103; Cic. *Rosc. Am.* 48. 139), and that the newly organized criminal courts were in operation for the first time in 80; Cic. ibid. 5. 11; 10. 28; *Brut.* 90. 312; *Off.* ii. 14. 51; Gell. xv. 28. 3; Plut. *Cic.* 3.

On the form of comitia used for the ratification of his measures, see p. 236.

[8] The general character of these proposals, among which the frumentarian alone was adopted, can be gathered from the *Oration* of Lepidus, in Sall. *Hist.* i. 55; cf. Gran. Licin. x. p. 44: "Legem frumentariam nullo resistente adeptus est, ut annonae quinque modi populo darentur, et alia multa pollicebantur: exules reducere, res gestas a Sulla rescindere"; Tac. *Ann.* iii. 27; Klebs, in Pauly-Wissowa, *Real-Encycl.* i. 554 f.

sue for other offices,[1] however, was restored by a statute of the consul C. Aurelius Cotta, 75.[2]

Before coming to the restoration of the tribunician power it is necessary to mention the statutes passed under the Cornelian constitution. To 78 or 77 probably belongs the lex Plautia de vi, generally regarded as tribunician, which established a quaestio perpetua for the trial of persons charged with violence. It also forbade the acquisition by long use of things stolen or violently seized.[3] As no censors were elected, an order of the people of unknown authorship in 75, pursuant to a senatus consultum, empowered the consuls of the year to farm the vectigalia.[4] The approaching end of the Cornelian régime was foreboded in the Plautian law for the recall of Cinna and other exiled democrats, if indeed this measure belongs to 73,[5] and certainly in the consular law of Cn. Cornelius Lentulus Clodianus, 72, which directed the consuls of the year to collect the money remitted by Sulla to the purchasers of confiscated estates.[6] A popular tendency may be discovered as well in the

[1] P. 414.

[2] Sall. *Hist.* ii. 49; Ascon. 66, 78; Pseud. Ascon. 200; Lange, *Röm. Alt.* iii. 178 f.; Long, *Rom. Rep.* iii. 3; Herzog, *Röm. Staatsverf.* i. 531 f.; Klebs. ibid. ii. 2483.

Cicero, *Cornel.* i. 18 (Frag. A. vii), states that Cotta proposed to the senate the repeal of his own laws, whereupon Asconius comments that he can find the mention of no law of his except the one concerning retired tribunes above described. Cicero, however, attributes to him a lex de iudiciis privatis, which his brother caused to be repealed in the following year; *Cornel.* i. 19. It is not otherwise known.

[3] Sall. *Cat.* 31; Gaius ii. 45; Cuq, in Daremberg et Saglio, *Dict.* iii. 1159. For the cases coming before this court, see Greenidge, *Leg. Proced.* 424, n. 6.

[4] Cic. *Verr.* iii. 8. 9. C. Scribonius, consul in the preceding year, may have been author of the lex Scribonia de usucapione servitutum (*Dig.* xli. 3. 4. 28; cf. Cic. *Caecin.* 26. 74), or it may belong to the tribune of the same name of the year 50; p. 450, n. 2.

[5] P. 413, n. 4. The consuls of 73 passed a frumentarian measure — the lex Cassia Terentia, considered below; p. 444, n. 6.

[6] Sall. *Hist.* iv. 1, in Gell. xviii. 4. 4. Sallust speaks of nothing more than the promulgation of the law; but we know that afterward an attempt was made to collect the moneys; Ascon. 72; cf. Lange, *Röm. Alt.* iii. 190, 221; Drumann-Gröbe, *Gesch. Roms*, ii. 467. Münzer, in Pauly-Wissowa, *Real-Encycl.* iv. 1380, speaks of the measure as a proposal.

The same consul with his colleague, L. Gellius Poplicola, proposed and carried a law for confirming the grants of citizenship already made by Pompey in Spain; Cic. *Balb.* 8. 19; 14. 32 f.; Pliny, *N. H.* v. 5. 36. Their joint proposal that provincials

final settlement of the question of conflict between sessions of the senate and of the comitia by the lex Pupia, which seems to have been a statute of M. Pupius Piso Calpurnianus, praetor in 71.[1] It forbade the magistrates to convoke the senate on those comitial days on which an assembly actually met,[2] the prohibition applying to that part only of the day which preceded the dismissal of the comitia.[3] It was probably this year which saw the enactment of the lex Antonia de Termessibus — a plebiscite proposed de senatus sententia by C. Antonius, tribune of the plebs, and several of his colleagues, for granting to Termessus Major in Pisidia the rights of a free state in friendship and alliance with Rome, and for regulating on that basis the relations which were to exist between the inhabitants and the Romans.[4]

The struggle for the rehabilitation of the tribunes began in 78, when those officials applied to the consuls for legislation on the subject. Even Aemilius Lepidus[5] declined, as he could see no advantage in the unhampered tribunate.[6] Though generally in these early years of the Cornelian régime the tribunes were mere puppets of the senate, one of them in 76, L. Sicinius, dared in a contio to plead for the full restoration of their office.[7] In the following year Q. Opimius, another tribune, continued the struggle, with such success that he secured the passage of the Aurelian law above mentioned.[8] This measure narrowly escaped annulment, and Opimius after retiring from office was

should not in their absence be tried on a capital charge took the form merely of a senatus consultum; Cic. *Verr.* II. ii. 38. 95; Münzer, ibid.; Drumann-Gröbe, ibid.

In 71 (*CIL.* i. 593 = vi. 1299) and in 62 (*CIL.* i. 600 = vi. 1305) there was a curator viarum e lege Visellia. The law mentioned could not have been later than 71, but may have been many years earlier. There were curatores viarum in 115; *CIL.* vi. 3824; Marquardt, *Röm. Staatsv.* ii. 89, n. 6.

[1] Cic. *Flacc.* 3. 6; Ascon. 15; cf. Lange, *Röm. Alt.* iii. 191.

[2] Cic. *Q. Fr.* ii. 13. 3; *Fam.* i. 4. 1; cf. *Q. Fr.* ii. 2. 3; *Fam.* viii. 8. 5; *Sest.* 34. 74; Caes. *B. C.* i. 5.

[3] Cic. *Att.* i. 14. 5; Dio Cass. xxxvii. 43. 3. As consul in 63 Cicero adjourned the assembly in order to hold a meeting of the senate on a certain comitial day; Cic. *Mur.* 25. 51; Plut. *Cic.* 14.

[4] The first chapter of this law is preserved in an inscription; *CIL.* i. 204; Bruns, *Font. Iur.* p. 94; Girard, *Textes*, p. 66.

[5] P. 423.

[6] Gran. Licin. x. p. 44. It was charged against him by Philippus in the senate that for the sake of concord he wished to restore the tribunician power; Sall. *Hist.* i. 77. 14.

[7] Sall. *Hist.* iii. 48. 8; Pseud. Ascon. 103.

[8] P. 423 f.

exorbitantly fined on the ground that he had interceded in violation of a Cornelian law.[1] In the year of the condemnation of Opimius, 74, L. Quinctius, who had risen to the tribunate from the lowest social class, strove energetically for the same object,[2] though he could effect no more than the maintenance of the Aurelian law. Toward the close of his term, however, he opened battle against the senatorial courts, which had fallen into disfavor because of their corruption.[3] In 73 the contest was resumed by Licinius Macer the annalist, then tribune of the plebs, who demanded in vain the full restoration of the tribunician power.[4] In his efforts he had the support of C. Julius Caesar.[5] The struggle died down as the danger from Spartacus rose; but at the close of the servile war it was a tribune of the plebs, M. Lollius Palicanus, a man of low birth, who in a contio held outside the walls in order that Pompey, a proconsul, might attend, persuaded the latter to commit himself publicly to a definite promise to bring about a repeal of the lex Cornelia de tribunicia potestate.[6] Inveighing against the corruption of the senatorial courts,[7] Pompey in the same speech intimated an intention to propose a bill on this subject as well.

Shortly after entering upon the office of consul in 70, or at all events before the elections of the year,[8] Pompey promulgated his rogation for the restoration of the tribunician power. The senate yielded in spite of its dislike for the measure,[9] and Licinius Crassus, his colleague,[10] added his name to the proposal.[11] The people gladly accepted it. Those articles of the Cornelian statute which remained untouched by the Aurelian

[1] Cic. *Verr.* II. i. 60.

[2] Cic. *Cluent.* 34. 93 f.; Ascon. 103; Plut. *Lucull.* 5.

[3] Licinius Macer, *Oratio ad plebem*, in Sall. *Hist.* iii. 48. 11 (cf. iv. 71); Cic. *Cluent.* 22. 61; 27. 74; 28. 77; 29. 79; Pseud. Ascon. 141; Schol. Gronov. 386, 395, 441.

[4] Sall. *Hist.* iii. 48; Cic. *Brut.* 67. 238.

[5] Suet. *Caes.* 5.

[6] Plut. *Pomp.* 21; App. *B. C.* i. 121. 560; Sall. *Hist.* iv. 44 ("Magnam exorsus orationem") probably refers to his speech in this contio. Frag. 45 ("Si nihil ante adventum suum inter plebem et patres convenisset, coram se daturum operam") seems also to be from this speech.

[7] Sall. *Hist.* iv. 46.

[8] Cic. *Verr.* i. 16. 46 f.

[9] Ibid. 15. 44; Pseud. Ascon. 147.

[10] *CIL.* i^2. p. 154.

[11] Livy, ep. xcvii; Cic. Frag. A. vii (*Cornel.* i). 47; Ascon. 75; Pseud. Ascon. 103.

law of 75 were thereby repealed, and every restriction on the tribunes removed.[1] By destroying the chief support of the Cornelian constitution this measure paved the way to its overthrow. Notwithstanding the popular clamor for a reform of the courts,[2] Pompey hesitated to propose a law for that purpose, as he hoped rather to purify the senatorial order through a severe censorial revision so as to make a judiciary law unnecessary. The reform, however, was taken in hand by L. Aurelius Cotta, praetor in the same year, youngest brother of the consul of 75.[3] The rogation was promulgated while the trial of Verres was in progress and while the people were excited by lack of confidence in the senatorial jurors.[4] The first project seems to have been the retransfer of the courts to the equites;[5] but when the senators saw that they were destined to lose in the contest, they were able to save something by compromise. It was agreed that there should be three decuries of jurors, composed in equal numbers of senators, knights, and tribuni aerarii respectively.[6] The last-named decury was included because the Plautian judiciary law of 89 had opened the courts to common citizens in addition to senators and knights,[7] and it was now thought that no less liberality should be shown. The Aurelian statute provided accordingly that the urban praetor[8] should make up the annual album iudicum of an equal number of men from each of the three classes.[9] The good feature of

[1] Sall. *Cat.* 38; Vell. ii. 30. 4; Cic. *Leg.* iii. 9. 22; ii. 26; Plut. *Pomp.* 22; App. *B. C.* ii. 29. 113; cf. Cic. *Verr.* v. 63. 163; 68. 175; Schol. Gronov. 397; Lange, *Röm. Alt.* iii. 192 f.; Long, *Rom. Rep.* iii. 49–51; Herzog, *Röm. Staatsverf.* i. 553.

[2] Cic. *Verr.* i. 15. 45.

[3] P. 424. Pompey found it popular to give his assent; Plut. *Pomp.* 22; cf. Neumann, *Gesch. Roms*, ii. 75.

[4] Cicero, in his *In Verrem Actio* I, is unacquainted with the rogation and expresses the hope that the condemnation of Verres will restore confidence in the senatorial courts. In *Actio* II, composed after the exile of Verres and not delivered, he assumes the existence of such a rogation (cf. v. 69. 177).

[5] Cic. *Verr.* ii. 71. 174 f.; iii. 96. 223 f.; v. 69. 177 f.; Livy, ep. xcvii; Plut. *Pomp.* 22; Pseud. Ascon. 127.

[6] On the tribuni aerarii, see p. 64, n. 3. See also Cic. *Phil.* i. 8. 20; *Rab. Perd.* 9. 27; *Cat.* iv. 7. 15; Ascon. 16; Schol. Bob. 339.

[7] P. 402.

[8] Cic. *Cluent.* 43. 121.

[9] Cic. *Att.* i. 16. 3; *Phil.* i. 8. 20; Ascon. 16, 30, 53, 67, 78, 90; Pseud. Ascon. 103; Schol. Bob. 229, 235, 339; Schol. Gronov. 384, 386; Lange, *Röm. Alt.* iii.

the law is obvious. As experience had proved the equestrian courts, as well as the senatorial, to be partisan and corrupt, it was hoped that a combination of the two with an equal proportion of the most responsible and respectable common citizens would be just and impartial. If these expectations were not realized, it was the fault of the Romans, not of their law.

II. *Democracy in Alliance with Caesarism*

70–49

The first tribunician law under the restored constitution may have been the sumptuary statute of C. Antius Restio, which Lange[1] assigns to the year 70. It limited the amount to be expended on festive meals; it designated some delicacies as allowable and others as forbidden; and it regulated the participation of candidates and of magistrates in dinners away from home, doubtless with a view to curtailing ambitus practiced by such means.[2] Far however from being a partisan measure, this statute seems to have been suggested by the censors of the year, to reënforce their function of supervising the morals of the citizens.

Three years passed before the tribunes of the plebs were ready to make independent use of their recovered power. The reason is to be found in the harmony — concordia ordinum[3] — reëstablished between senators and knights, when representatives of the two classes found themselves sitting together on the jury benches. Although the object of the combination was idealized by contemporaries, it was in fact a governing "trust," which in practice operated for the maintenance of plutocracy and for the ruthless exploitation of the provincials.[4] The nobles were willing to concede something to the equites to make permanent the alliance with this powerful order.[5] L. Roscius

197 f.; Herzog, *Röm. Staatsverf.* i. 533; Greenidge, *Leg. Proced.* 442 ff.; Long, *Rom. Rep.* iii. 51–3; Klebs, in Pauly-Wissowa, *Real-Encycl.* ii. 2485 f.

The reference to a lex Aurelia in Cic. *Q. Fr.* i. 3. 8, seems to be, not to a lex de ambitu, as Lange, ibid. iii. 198, supposes, but to the lex iudiciaria under discussion.

[1] *Röm. Alt.* ii. 199 (cf. ii. 671). It must have been passed between the death of Sulla and 57; Gell. ii. 24. 13; Macrob. *Sat.* iii. 17. 13; Cic. *Fam.* vii. 26. 2.

[2] Q. Cic. *Petit. Cons.* 11. 44.

[3] Cic. *Cluent.* 55. 152 (year 66).

[4] Cic. *Att.* i. 17. 9; *Off.* iii. 22. 88; cf. Lange, *Röm. Alt.* iii. 202.

[5] Cf. Neumann, *Gesch. Roms*, ii. 141.

Otho, tribune of the plebs in 67, as spokesman of the optimates[1] "railroaded"[2] through the assembly a statute which ordered that there should be reserved in the theatre for those in possession of the equestrian census[3] fourteen rows of seats just back of the orchestra, in which sat the senators.[4] It was more than a restoration of the concession made to the knights in 146, which evidently Sulla had withdrawn.[5]

There were in this year (67), however, two popular tribunes, A. Gabinius and C. Cornelius, both of whom proposed and carried laws in the interest of the people. Early in the year Gabinius persuaded the tribes to adopt a statute which ordered the senate to sit daily during February to consider embassies.[6] It was in this month that delegations from other states generally came. Often to obtain a hearing they had to bribe the senators and magistrates.[7] For that month the Gabinian law reversed the Pupian[8] by making senatorial sessions compulsory and forbidding the concurrence of comitia.[9] The object was to limit the stay of foreign embassies at Rome not only for their own convenience but also for lessening both the need and the opportunity for bribery. Closely related was the purpose of his statute which forbade lending money to provincials at Rome.[10] Representatives of subject and allied states, finding it necessary to bribe more extensively than their resources in hand allowed, were tempted to borrow of the capitalists at exorbitant interest. Private individuals from the provinces must often have similarly borrowed to the ruin of their fortunes. The double aim of the statute, accordingly, was to help the provincials and to check bribery. How it passed against senatorial opposition is unknown. A supplementary measure on the same subject was

[1] Dio Cass. xxxvi. 30.

[2] Cic. Frag. A. vii (*Cornel.* i). 52; Ascon. 78.

[3] Cic. *Phil.* ii. 18. 44; Hor. *Epist.* i. 1. 61; Juv. iii. 159; xiv. 324.

[4] Livy, ep. xcix; Tac. *Ann.* xv. 32; Ascon. 79; Cic. *Mur.* 19. 40; Dio Cass. xxxvi. 42. 1; cf. Hor. *Epod.* iv. 15. The censors of 194 had given front seats to the senators; p. 356 f.

[5] Vell. ii. 32. 3; Cic. *Mur.* 19. 40; p. 356 f. above.

[6] Cic. *Q. Fr.* ii. 11. 3.

[7] Drumann-Gröbe, *Gesch. Roms*, ii. 526.

[8] P. 425.

[9] Cic. *Q. Fr.* ii. 13. 3; cf. *Fam.* i. 4. 1.

[10] Cic. *Att.* v. 21. 12; vi. 2. 7. Loans were sometimes made in violation of the law (*Flacc.* 20. 46 f.), and sometimes the senate granted a dispensation from it; *Att.* v. 21. 11 f.; vi. 2. 7; Lange, *Röm. Alt.* iii. 203.

proposed to the senate by C. Cornelius, a colleague of Gabinius, for prohibiting the lending of money to the legati of other states, the idea being identical with that of the two Gabinian laws. The good intention of Cornelius is vouched for by the well-known uprightness[1] of his character, which contrasts with the reputed vileness of Gabinius. But the senate rejected the proposal on the ground that it had already made sufficient provision for checking the abuse. Although Cornelius thereupon complained in a contio that the provinces were being exhausted by usury, he does not seem to have urged his measure further.[2] He promulgated, however, against the interests of the senate a rogation for ordering that no one should receive a dispensation from a law excepting through a vote of the comitia. This right had been acquired by the people in the period between the Publilian and the Hortensian legislation (339–287).[3] It had come to be regarded as inseparable from the sovereignty of the people to such an extent that all senatus consulta for dispensing from the laws contained a provision for bringing the matter before the comitia. Gradually the custom of referring to the people ceased, and at last the provision to that effect was dropped from senatorial decrees. The result was that often a few senators, meeting in the Curia, voted away to acquaintances and relatives the valuable privilege of exemption from a law. The optimates induced a tribune of the plebs, P. Servilius Globulus, to intercede against the bill while it was being read to the assembly prior to the vote. When the dissenting tribune forbade the crier to proceed with the reading, Cornelius himself read it.[4] A disturbance in the assembly, started by the interference of Piso the consul, caused Cornelius to dismiss the concilium. Afterward he so compromised with the optimates as to secure the passage of a law that no dispensations should be granted by the senate unless two hundred members were present, and that when a resolution of the kind was brought down from the senate to the people, no one should intercede against the act.[5] The victory was with the senate; it gained a legal right to a function which it had usurped, provision being merely

[1] Ascon. 56. [2] Ibid. 57. [3] P. 307 f.

[4] Cic. Frag. A. vii (*Cornel.* i). 5; *Vatin.* 2. 5; Ascon. 57 f.; Quintil. *Inst.* x. 5. 3 (iv. 4. 8).

[5] Ascon. 58; Dio Cass. xxxvi. 39. 4.

made against abuse. But it exercised this function by the sufferance of the tribunes, any one of whom could insist on bringing the dispensing resolution before the people, in which case his colleagues were forbidden to intercede.[1]

Another proposal of this tribune was the rogatio de ambitu, which threatened with severe penalties not only the candidates but also their agents, the divisores, whose duty was to distribute the corruption fund among the tribes.[2] The senate, declaring the penalties so harsh that neither accuser nor jurors could be found to enforce it, put the bill in the hands of the two consuls, C. Calpurnius Piso and M'. Acilius Glabrio.[3] Here was a comical situation; both consuls were liable to the existing law on the subject; but for the sake of appearances they had to revise the bill and present it to the comitia in the Forum.[4] The lex Acilia Calpurnia, enacted in this way,[5] inflicted on those found guilty of the crime a heavy fine, and forever disqualified them from holding office or sitting in the senate.[6] Cornelius proposed other measures, all of which were vetoed by colleagues excepting his lex concerning the edict of the praetor, described as follows by Dio Cassius:[7] "All the praetors themselves compiled and published the principles according to which they intended to try cases; for all the decrees regarding contracts had not yet been laid down. Now since they were not in the habit of doing this once for all and did not observe the rules as written, but often made changes in them and incidentally a number

[1] Cf. Lange, *Röm. Alt.* iii. 214; Mommsen, *Röm. Staatsr.* iii. 337 f.; Long, *Rom. Rep.* iii. 107. Dio Cassius, xxxvi. 39, has wholly misunderstood the matter. Ferrero's account (*Rome*, i. 194) of the Cornelian legislation is inaccurate in all points.

[2] Dio Cass. xxxvi. 38. 4; Cic. Frag. A. vii (*Cornel.* i). 40.

[3] *CIL.* I^2. p. 156; Klebs, in Pauly-Wissowa, *Real-Encycl.* i. 256 f.; Münzer, ibid. iii. 1376 f.

[4] Ascon. 75.

[5] Schol. Bob. 361; Ascon. 68, 89; Cic. *Mur.* 23. 46; 32. 67. It was opposed by the people, who preferred the stricter measure of Cornelius; but Piso with a crowd of followers forced it through the assembly; Dio Cass. xxxvi. 38. 1.

[6] Schol. Bob. 361; Dio Cass. xxxvi. 38; xxxvii. 25. 3; Greenidge, *Leg. Proced.* 425, 508, 521 f.; Mommsen, *Röm. Strafr.* 867; Long, *Rom. Rep.* iii. 105 f. It was supplemented by the lex Fabia de numero sectatorum, apparently a plebiscite of 66; Cic. *Mur.* 34. 71; Mommsen, ibid. 871; Drumann-Gröbe, *Gesch. Roms*, ii. 527.

[7] XXXVI. 40. 1 f. (Foster's rendering); cf. Ascon. 58; Cic. *Fin.* ii. 22. 74; Lange, *Röm. Alt.* ii. 656; iii. 215; Long, *Rom. Rep.* iii. 107 f.; Drumann-Gröbe, *Gesch. Roms*, ii. 527; Greenidge, *Leg. Proced.* 95, 97 f., 122.

of clauses naturally appeared in some one's favor or to some one's hurt, he moved that they should at the very start announce the principles they would use and not swerve from them at all." The object was to make the administration of the law more just and regular, and to cut off an opportunity for favoritism.[1]

By far the most important measure of the year was the Gabinian law for the appointment of an especial commander against the pirates. The proposition was that from the consulares should be chosen a general for putting down the pirates; that his province should be the entire Mediterranean and a strip of its coasts extending fifty miles inland, including Italy and the islands; that the command should continue three years; that the holder of this imperium should have the right to fifteen legati and 200 ships, and the privilege of enlisting soldiers and oarsmen over all his province; that he should have credit with the aerarium at Rome and the publicans in the provinces for 6000 talents.[2] The name of Pompey did not appear in the bill, but no one doubted who was to be the man. The optimates were all opposed, though in 74 they had given Antonius such a command,[3] which now served Gabinius as a precedent. The senate was compelled by threats of the people to yield, but used its influence on the colleagues of Gabinius to have them oppose the measure. Two of them, L. Roscius Otho, author of the lex theatralis,[4] and L. Trebellius, attempted to prevent comitial action. The tribes began to vote the deposition of Trebellius; but before the eighteenth was called he desisted.[5] Thereafter both remained silent, and the law was passed. Pompey was then elected to the command by the tribes.[6] They enacted further that he should have two quaestors, twenty-four legati pro praetore, 500 ships, 120,000 men,

[1] Ascon. 58. The restriction, however, was only partial; Erman, in *Mélanges* Ch. Appleton (1903), 201–304. The author of the law seems to have been a man not only of excellent heart but of remarkably statesmanlike views, though the optimates naturally classed him as seditious. On Cornelius in general, see Münzer, in Pauly-Wissowa, *Real-Encycl.* iv. 1252–5; Drumann-Gröbe, *Gesch. Roms*, ii. 526–9.

[2] Dio Cass. xxxvi. 23 ff.; Plut. *Pomp.* 25; Vell. ii. 31; App. *Mithr.* 94.

[3] Vell. ii. 31; Cic. *Verr.* ii. 3. 8; iii. 91. 213; Pseud. Ascon. 122, 176, 206; Schol. Bob. 234; Sall. *Hist.* iii. 4 f.

[4] P. 428 f.

[5] Dio Cass. xxxvi. 30. 2; cf. the deposition of Octavius, p. 367.

[6] Cic. *Imp. Pomp.* 15. 44; Livy, ep. xcix; Eutrop. vi. 12.

and 5000 cavalry. On one point only the senate refused its sanction; it would not permit Gabinius to be a legatus.[1] An article of the statute gave as a province to the outgoing consul, M'. Acilius Glabrio, Bithynia and Pontus with the conduct of the war against Mithridates.[2] The Gabinian law led to far-reaching consequences. It established temporarily, not precisely a monarchy, but a dyarchy, as the Roman world was thereby divided between the senate and a general with almost absolute power. The arrangement was a prototype of the Augustan system. At the outset the act seemed to be justified by the results, for immediately after its adoption the price of grain fell from the famine height to which the piratical control of the seas had forced it.[3]

An addition to this vast power was made in the following year by the Manilian law. The author, C. Manilius, after entering upon his tribunate on December 10, 67, promulgated a rogation for giving libertini the right to vote in the tribes of their patrons.[4] It was said by some, though probably without ground, that the real author was Cornelius.[5] While in general the optimates disliked the measure, some favored it in the hope that they would gain political influence through the votes of their freedmen.[6] In spite of the fact that constitutionally the comitia could not be held on a festive day, Manilius convoked the assembly on the last day of the year, which was the Compitalia, toward evening, gathering to the assembly a few men who he knew favored the proposal. On the following day the senate heard of the enactment and at once declared it invalid.[7] The behavior of Manilius exposed him to certain prosecution unless he could win powerful support. This is the motive ascribed to him by Dio Cassius[8] for his famous law

[1] Plut. *Pomp.* 26; Dio Cass. xxxvi. 37. 1; Cic. *Imp. Pomp.* 19. 57 f.

[2] Sall. *Hist.* v. 13; cf. Klebs, in Pauly-Wissowa, *Real-Encycl.* i. 256.

[3] Cf. Drumann-Gröbe, *Gesch. Roms*, ii. 76. Another comitial act on foreign affairs was the plebiscite of unknown authorship providing for a commission of ten to aid Lucullus in settling the affairs of Asia; Dio Cass. xxxvi. 43. 2.

[4] Ascon. p. 64 ff.; Dio Cass. xxxvi. 42. 1–3.

[5] Cic. Frag. A. vii (*Cornel.* i). 3. [6] Cic. *Mur.* 23. 47.

[7] Ascon. 65 f. The Cn. Manlius mentioned by Ascon. 45 f. is probably to be identified with this Manilius; Drumann-Gröbe, *Gesch. Roms*, iii. 19, n. 9.

[8] XXXVI. 42. 3.

which conferred extraordinary power on Pompey for the conduct of the war against Mithridates.[1] It gave the Roman general, in addition to his existing command, the provinces of Asia, Bithynia, and Cilicia with the right to declare war and make treaties at his discretion.[2] The province thus granted him included nearly all the eastern domain of Rome which had not already been conferred by the Gabinian law. No discussion of this measure in the senate is mentioned, though it is difficult to understand how such action could be avoided.[3] The only optimates who opposed the bill in contiones were Q. Lutatius Catulus and Q. Hortensius, who had been the chief opponents of the Gabinian law. Their objection was the monarchical position in which these measures were placing Pompey.[4] Its leading supporters were Caesar and Cicero.[5] It was so enthusiastically favored by the knights and the populace that its adoption was from the beginning a foregone conclusion.

In 65 the conservatives found themselves strong enough to put through the assembly the plebiscite of C. Papius for expelling the peregrini from Rome, and for punishing those who had usurped the rights of the citizens. The object was to prevent Latin-speaking foreigners, especially the Transpadane Gauls, from packing the assemblies with a view to passing measures for the further extension of the franchise. The Papian law was modelled after the Claudian of 177,[6] the Junian of 126,[7] and in some respects after the Licinian-Mucian of 95.[8] Probably to the same Papius belongs the lex Papia de Vestalium lectione, which limited the power of choice exercised by the supreme pontiff.[9]

[1] Ascon. 66, or more simply the "lex de imperio Cn. Pompeii"; Cic. *Imp. Pomp.* Inscr.

[2] Dio Cass. xxxvi. 42. 4; Plut. *Pomp*, 30; *Lucull.* 35; App. *Mithr.* 97; Livy, ep. c; Vell. ii. 33. 1; Eutrop. vi. 12.

[3] Lange, *Röm. Alt.* iii. 219; Willems, *Sén. Rom.* ii. 586 f.

[4] Cic. *Imp. Pomp.* 17. 51 ff.; 20. 59 ff.; Plut. *Pomp.* 30.

[5] Dio Cass. xxxvi. 43. 2, and especially Cicero's oration *De imperio Pompeii ad quirites.* Long, *Rom. Rep.* iii. 131 f., severely criticises Dio Cassius for his treatment of Cicero's motives. [6] P. 354. [7] P. 370.

[8] P. 397; Cic. *Off.* iii. 11. 47; *Brut.* 16. 63; *Balb.* 21. 48; 23. 52; 24. 54; *Arch.* 5. 10; *Leg. Agr.* i. 4. 13; Ascon. 67; Schol. Bob. 296, 354; Dio Cass. xxxvii. 9. 5; Lange, *Röm. Alt.* iii. 229; Drumann-Gröbe, *Gesch. Roms*, iii. 140.

[9] Gell. i. 12. 11 f.; Suet. *Aug.* 31; Lange, ibid. ii. 675 f.; iii. 229; Wissowa, *Relig. u. Kult. d. Röm.* 439.

After the unusual comitial activity of 67–66 there was almost a pause in legislation till the year of Cicero's consulship, 63. To that date belongs the plebiscite of T. Atius Labienus, which restored the form of election of sacerdotes introduced by Domitius in 103[1] and abolished by Sulla.[2]

A remarkable effort at agrarian legislation was made at the beginning of the year by P. Servilius Rullus, tribune of the plebs. In December, 64, shortly after entering office, he promulgated a bill, comprising more than forty articles,[3] with the intention of having it voted on in January.[4] The administration of the law was to be in the hands of ten men elected by seventeen tribes after the manner of the comitia pontificis maximi,[5] to hold office five years.[6] Candidates should be required to present themselves in person[7] (so as to exclude Pompey). This commission was to have the irresponsible[8] management of large resources[9] for the purchase of land in Italy,[10] on which they were to plant colonies at their discretion.[11] The object of the rogation seems to have been the creation of an oligarchy of ten who with their vast powers and revenues should control Rome and counterbalance the military prestige of Pompey. Caesar and Crassus were probably behind the scheme. Should it by any chance succeed, they would be the dominant members of the board. Its faulty structure and revolutionary demands, however, made failure almost certain from the outset. At all events Cicero, driven into the ranks

[1] P. 391.

[2] P. 416. On the lex Atia, see Dio Cass. xxxvii. 37. 1; Lange, *Röm. Alt.* iii. 243. This act had no effect on the supreme pontificate, which had remained elective (p. 416 above) and which was conferred on Caesar soon after (Drumann-Gröbe, *Gesch. Roms*, iii. 155 f.) the enactment of the Atian law; Dio Cass. ibid.; Suet. *Caes.* 13; Vell. ii. 43. 3. The same Atius, together with T. Ampius Balbus, a colleague, proposed and carried a plebiscite for granting to Pompey the privilege of wearing the triumphal ornaments in the Circensian games and the toga praetexta and laurel (or golden?) crown at the theatres; Vell. ii. 40. 4; Dio Cass. xxxvii. 21. 3 f.

[3] Cic. *Leg. Agr.* iii. 2. 4.

[4] Ibid. i. 2. 4; ii. 5. 13.

[5] Ibid. ii. 7. 16–8; 8. 21.

[6] Ibid. ii. 13. 34; 24. 64.

[7] Ibid. ii. 9. 24.

[8] Ibid. i. 5. 15; ii. 13. 33; 27. 72.

[9] From (1) an extensive sale of houses, lands, and other property belonging to the state (ibid. i. 1. 3; 3. 10; ii. 14. 35; 15. 38), (2) vectigalia (i. 4. 10; ii. 21. 56), and (3) other public moneys (i. 4. 12 f.; ii. 22. 59).

[10] Ibid. ii. 25. 66.

[11] Ibid. i. 5. 16 f.; ii. 13. 34; 20. 55; 24. 63; 25. 66; 26. 68; 27. 74 f.

of the optimates by the necessity of opposing it, — so Caesar may have reasoned, — would thus be eliminated from the leadership of the democratic party, while the populace, with appetite whetted for an agrarian law, would be ready for the saner measure which Caesar was himself intending to propose as soon as an opportunity offered. But Cicero out-manoeuvred his adversaries. It was as a friend of the people and an ally of the tribunes that he opposed the bill in two contiones,[1] after which a threat of intercession on the part of a colleague induced Rullus to withdraw it.

In Cicero's judgment there was pressing need of a new lex de ambitu to cover the loopholes left by the Acilian-Calpurnian statute of 67.[2] Early in the year he passed through the senate a decree which so interpreted that enactment as to make it apply to the hiring of sectatores, the granting of free seats to the tribes at gladiatorial shows, and the entertainment of the public at dinners.[3] Later in the summer, after the elections of the year had been announced, a dispensation from the Aelian-Fufian law[4] enabled him and C. Antonius, his colleague,[5] to propose and carry a new statute concerning bribery at elections.[6] It increased the penalty on the divisores,[7] and forbade any one within the two years preceding the announcement of a candidacy to give gladiatorial shows excepting in fulfilment of a testament.[8] The penalty for the convicted candidate was ten years' exile.[9] The part of the law which had to do with the jurors included a provision for fining those who absented themselves from the trial even on the ground of illness.[10] A measure certainly passed in this year, and probably forming an article of the Tullian lex de ambitu, forbade

[1] These are the second and third *Orations on the Agrarian Law*, the first having been delivered in the senate. On the purpose of the rogation, see Neumann, *Gesch. Roms*, ii. 223 ff.; Drumann-Gröbe, *Gesch. Roms*, iii. 143; Ferrero, *Rome*, i. 231–3.

[2] P. 431.

[3] Cic. *Mur.* 32. 67.

[4] Cic. *Vat.* 15. 37; p. 359 above.

[5] *CIL.* i². p. 156.

[6] Cic. *Mur.* 2. 3; 3. 5; 23. 47; 32. 67; Schol. Bob. 269, 309, 324, 362.

[7] Cic. *Mur.* 23. 47.

[8] Cic. *Vat.* 15. 37; *Sest.* 64. 133 (cf. *Har. Resp.* 26. 56); Schol. Bob. 309.

[9] Cic. *Mur.* 23. 47; 41. 89; *Planc.* 34. 83; Schol. Bob. 269, 362; Dio Cass. xxxvii. 29. 1.

[10] Cic. *Mur.* 23. 47. On the law in general, see Lange, *Röm. Alt.* iii. 245; Hartmann, in Pauly-Wissowa, *Real-Encycl.* i. 1801.

candidacies in absentia.[1] Amid the troubles connected with the Catilinarian conspiracy Cicero found time for an attempt to relieve the provincials of one of the most flagrant abuses inflicted on them by the senatorial oligarchy. To increase the dignity and lessen the expense of a member while travelling even on private business through the provinces, the senate was accustomed to have the office of public legatus conferred on him by a magistrate, which honor at the same time implied the right to be absent from sessions of the senate.[2] In this capacity a senator represented the state,[3] and could have lictors assigned him by the provincial governors.[4] Abuses of this privilege were to the provincials an especially vexatious form of oppression.[5] Cicero's first rogation on the subject proposed to abolish the free legation, but when a tribune in the service of the illiberals interceded, the measure before enactment was so weakened as to limit the privilege of any one person to a single year,[6] and hence did little to remedy the mischief.[7] There was in fact no hope for the provincials either from the avaricious plutocrats or the hungry proletarians.

The legislation of the years between the consulships of Cicero and Caesar, 63–59, involved no important principle. To pre-

[1] Cic. *Leg. Agr.* ii. 9. 24, proves that no such law existed at the beginning of 63, and in 62 its existence is assumed by the Caecilian rogation for dispensing Pompey from its provisions; Schol. Bob. 302.

In 61 M. Aufidius Lurco, tribune of the plebs, attempted a curious modification of the statute concerning corruption at elections, proposing that promises of money to the tribes should not be binding, but that a candidate who actually paid should be liable for life to a payment — apparently annual — of three thousand sesterces to the tribe. His measure failed to become a law; Cic. *Att.* i. 16. 12 f.; 18. 3; Hartmann, ibid. i. 1802.

[2] Cic. *Fam.* xi. 1. 2; *Att.* ii. 18. 3.

[3] Cic. *Leg.* iii. 8. 18.

[4] Cic. *Fam.* xii. 21.

[5] Cic. *Leg. Agr.* i. 3. 8; 17. 45; *Flacc.* 34. 86.

[6] Cic. *Leg.* iii. 8. 18.

[7] Cic. *Flacc.* 34. 86; *Fam.* xii. 21; *Att.* ii. 18. 3; xv. 11. 4; Suet. *Tib.* 31; Lange, *Röm. Alt.* iii. 244.

Several unpassed bills of the year 63 are mentioned. (1) The rogation of L. Caecilius, tribune of the plebs, for lightening the penalty upon P. Autronius Paetus and P. Cornelius Sulla, who had been condemned for ambitus; Dio Cass. xxxvii. 25. 3; Cic. *Sull.* 22 f.; cf. *Leg. Agr.* ii. 3. 8; 4. 10. — (2) A proposal to restore to the children of those whom Sulla had proscribed the right to become candidates for offices; Dio Cass. ibid.; Plut. *Cic.* 12; Cic. *Att.* ii. 1. 3. — (3) A proposal for the cancellation of debts and (4) another for the allotment of lands in Italy. All these measures were quashed by Cicero; Dio Cass. ibid. § 3 f.

vent the introduction of forged statutes in the archives,[1] a law of D. Junius Silanus and L. Licinius Murena, consuls in 62, forbade the filing of a statute in the aerarian archives excepting in the presence of witnesses.[2] In this year M. Porcius Cato and L. Marcius, tribunes of the plebs, carried a law which threatened with punishment commanders who reported falsely to the senate the number of the enemy killed and of citizens lost, and required them within ten days after returning to the city to give their oath before the urban quaestors that they had transmitted correct reports.[3] For the year 60 must be mentioned the pretorian law of Q. Caecilius Metellus Nepos, which abolished vectigalia in Italy,[4] and the tribunician rogation of L. Flavius for granting lands to Pompey's veterans. The latter failed through the disapproval of the senate.[5] Far more interesting because of the procedure, though otherwise of little consequence, was the tribunician rogation of Herennius of the same year for transferring P. Clodius to the plebeian rank. The subject has been considered in an earlier chapter.[6]

The year of Caesar's consulship was one of unusual legislative activity. Resuming the agrarian policy of the Gracchi, which had been undone by the statute of 111,[7] he promulgated early in the year a bill for the distribution of lands, which ex-

[1] Suet. *Caes.* 28. 3; Plut. *Cat. Min.* 17.

[2] Schol. Bob. 310. These same magistrates established a penalty for violations of the lex Caecilia Didia (Cic. *Phil.* v. 3. 8), whether by the law above mentioned or a separate enactment cannot be determined.

[3] Val. Max. ii. 8. 1. In 62 falls the unpassed bill of Q. Caecilius Metellus Nepos, tribune of the plebs (cf. p. 437, n. 1), directing Pompey to come to the defence of Italy against Catiline; Dio Cass. xxxvii. 43; Schol. Bob. 302. In the following year (61) the consuls, M. Pupius Piso and M. Valerius Messala, proposed a resolution for the appointment of a special commission to try Clodius on charge of having intruded in a religious festival exclusively for women; Cic. *Att.* i. 13. 3; *Mil.* 5. 13; 22. 59; 27. 73; Ascon. 53; Suet. *Caes.* 6; Dio Cass. xxxvii. 46. The bill provided that the jurors should not be drawn by lot in the usual way but appointed by the praetor; Cic. *Att.* i. 14. 1. It was withdrawn in favor of the plebiscite de religione for the same purpose but more favorable to the accused, presented by Q. Fufius Calenus, and accepted by the tribes; Cic. *Att.* i. 16. 2; *Parad.* iv. 2. 31; Plut. *Caes.* 10; Mommsen, *Röm. Strafr.* 198 f.

[4] Dio Cass. xxxvii. 51. 3; Cic. *Att.* ii. 16. 1; *Q. Fr.* i. 1. 11. 33; Lange, *Röm. Alt.* iii. 274. These taxes were made unnecessary by Pompey's acquisitions in the East.

[5] Cic. *Att.* i. 18. 6; 19. 4; Dio Cass. xxxvii. 50; Plut. *Cat. Min.* 31.

[6] P. 162.

[7] P. 386.

empted the Campanian[1] and Stellatine[2] territory as well as that of Volaterrae, which Sulla had confiscated without ejecting the inhabitants.[3] As little other public land remained in Italy, the bill ordered that money accruing from the sale of booty taken by Pompey, and from the new revenues of the territory he had won for Rome, be used for the purchase of lands from those who were willing to sell at the values assessed in the last census.[4] The beneficiaries were the needy citizens and the veterans of Pompey.[5] The lots assigned were to remain inalienable twenty years.[6] The work of distribution was to be in the hands of a board of twenty — vigintiviri[7] — which should not include the author of the law.[8] A sub-committee of this large board must have been the Vviri agris dandis adsignandis iudicandis,[9] who in the opinion of Mommsen[10] possessed the sole judicial power connected with the work of distribution. As the senate studiously delayed action on the measure, though unable to offer any criticism,[11] Caesar without its sanction presented the bill to the people.[12] Bibulus, his colleague, backed by three tribunes of the plebs, not only protested against the bill,[13] but resorted to sky-watching and the proclamation of festivals to prevent its adoption.[14] Disregarding this opposition, Caesar with the support of Pompey and Crassus offered his rogation to the tribes,[15] who accepted it with great enthusiasm. For the remainder of his term he ignored the senate in all his legislation. As to his other agrarian provisions, it is difficult to determine whether they were attached to this rogation before its enactment or formed a new bill. In favor of the second alternative

[1] Dio Cass. xxxviii. 1. 4. On the later inclusion of this territory, see p. 440 below.
[2] Suet. *Caes.* 20.
[3] Cic. *Fam.* xiii. 4. 2.
[4] Dio Cass. xxxviii. 1. 4 f.; Cic. *Dom.* 9. 23.
[5] Dio Cass. xxxviii. 1. 3; App. *B. C.* ii. 10. 35; Plut. *Cat. Min.* 31; *Pomp.* 47; *Cic.* 26.
[6] App. *B. C.* iii. 2. 5; 7. 24.
[7] Varro, *R. R.* i. 2. 10; Cic. *Att.* ii. 6. 2; 7. 3; ix. 2 a. 1; Vell. ii. 45. 2; Dio Cass. xxxviii. 1. 6 f.; Suet. *Aug.* 4.
[8] Dio Cass. ibid.
[9] *CIL.* vi. 3826 (Elogium of M. Valerius Messala, consul in 61); Cic. *Att.* ii. 7. 4; *Prov. Cons.* 17. 41.
[10] *Röm. Staatsr.* ii. 628, n. 4.
[11] Dio Cass. xxxviii. 2.
[12] Ibid. 3 f.; Plut. *Caes.* 14; App. *B. C.* ii. 10.
[13] Dio Cass. xxxviii. 6. 1.
[14] P. 116.
[15] The assembly met in the Forum, and was therefore tribal; Suet. *Caes.* 20; Dio Cass. xxxviii. 6. 2; Plut. *Cat. Min.* 32.

it is to be noticed in the first place that Cicero and others mention Julian agrarian laws,[1] and that Cicero's expression "Campanian lex"[2] could describe a measure relating to the Campanian territory but not the whole group of agrarian provisions of that year. Moreover although Cicero was acquainted with the Julian rogation from the beginning of the year,[3] he did not at Formiae hear of the inclusion of the Campanian territory till near the end of April.[4] It might be assumed that after the senate and Bibulus showed opposition Caesar modified the original rogation before putting it to vote, but no mention is made of an alteration. Finally Dio Cassius[5] and Plutarch[6] speak distinctly of an earlier and a later law.[7] On the whole it seems probable therefore that toward the end of April Caesar promulgated a second agrarian bill which provided for the distribution of the Campanian and Stellatine lands among needy citizens, preferably those who had three or more children.[8] The complete execution of the law would dispose of all public lands in Italy from which a revenue might be derived. An article required not only senators within a specified time to swear that they would support the measures[9] but also candidates for office

[1] Cic. *Att.* ii. 18. 2: "Ut ex legibus Iuliis" seems to be official language. The explanation of Marquardt, *Röm. Staatsv.* i. 114 f., which identifies one of the Julian laws with the lex Mamilia, Roscia, etc., is not satisfactory, though accepted by Drumann-Gröbe, *Gesch. Roms*, iii. 182. A plurality is also mentioned by Livy, ep. ciii; Schol. Bob. 302; Plut. *Pomp.* 47 f.; *Caes.* 14; App. *B. C.* ii. 10–2.

[2] *Att.* ii. 18. 2. [3] *Att.* ii. 3. 3 (Dec. 60); 6. 2; 7. 3.

[4] *Att.* ii. 16. 1. [5] XXXVIII. 1. 4; 7. 3. [6] *Cat. Min.* 31, 33.

[7] Lange, *Röm. Alt.* iii. 279–88, maintains that there were two agrarian laws; cf. Ferrero, *Rome*, i. 287–91. The opposite view is held by Marquardt, *Röm. Staatsv.* i. 114 f.; Drumann-Gröbe, *Gesch. Roms*, iii. 182.

[8] Dio Cass. xxxviii. 7. 3; *Cat. Min.* 33; Suet. *Caes.* 20; Vell. ii. 44. 4. Whereas Cicero was of the opinion that this district could provide not more than five thousand with lots of ten iugera, Suetonius and Velleius state that twenty thousand were settled in it. Some Campanian land remained undivided in 51; Cic. *Fam.* viii. 10. 4. Many settlements under the Julian law are mentioned in the *liber coloniarum*, in Gromat. 210, 220, 231, 235, 239, 259, 260.

It was in accord with Caesar's policy of colonization and of the extension of the franchise that P. Vatinius, tribune of the plebs in this year, carried a law for sending five thousand new settlers to Comum, a Latin colony in northern Italy. Some of the new residents he honored with the citizenship; Strabo v. 16; Suet. *Caes.* 28; App. *B. C.* ii. 26. 98; Plut. *Caes.* 29; Cic. *Att.* v. 11. 2; *Fam.* xiii. 35. 1. The franchise was afterward withdrawn by a decree of the senate; Suet. and Plut. ibid.

[9] Dio Cassius, xxxviii. 7. 1 f. (cf. Schol. Bob. 302; App. *B. C.* ii. 12. 42), is prob-

for the following year to give their oath in contio that they would not propose any modification or repeal of them.[1]

This statute was full of significance both in content and in the manner of enactment: it set at defiance the senate and the auspices; it deprived the state of important revenues, increasing correspondingly the financial burden on the provinces; it brought relief to many proletarians, while encouraging militarism through a provision for Pompey's veterans. Ostensibly democratic, it cemented and announced to the world the triumvirate of Caesar, Crassus, and Pompey — a combination of democratic, plutocratic, and military bossism, which proved more dangerous to political liberty than had been the dictatorship of Sulla. The last great agrarian law of the republic contained in itself a prophecy of the monarchy which its author was soon to establish.

Because of the losses suffered in Asia in the recent war with Mithridates, Caesar carried a law, also early in the year, for a remission of a third of the sum due to the treasury from the publicans of that province. As the senate had failed to pass a measure of relief for the contractors of revenue,[2] the concession from Caesar and the people served to alienate the feelings of the knights from the optimates and to attach them to the ambitious consul.[3] Next to the agrarian statute, however, the lex de

ably wrong in saying that death was the penalty for refusal to swear. Cicero (*Sest.* 28. 61) and Plutarch (*Cat. Min.* 32) speak simply of heavy penalties.

[1] Cic. *Att.* ii. 18. 2. The provision regarding the oath was not introduced till it was found that the senate opposed.

Supplementary to these Julian laws is the lex Mamilia Roscia Peducaea Alliena Fabia, three articles of which are contained in Gromat. 263–6; Bruns, *Font. Iur.* 96–8; Girard, *Textes*, 69 f. Other references to a lex Mamilia are Gromat. 11. 5; 12. 12; 37. 24; 144. 19; 169. 7; Cic. *Leg.* i. 21. 55. The last proves it to have been passed before 51. The seeming citation of the third article as an agrarian law of Gaius Caesar by *Dig.* xlvii. 21. 3, may indicate merely a borrowing of this article from the earlier law of Caesar, just as article 2 is substantially repeated in *Lex Col. Genet.* 104. Mommsen, in *Röm. Feldmess.* ii. 221–6; *Röm. Staatsr.* ii. 628, n. 4, considers it the work of a second sub-committee (Vviri) of the vigintiviri provided for by the agrarian law, enacted to furnish rules for the administration of the latter. Lange (*Röm. Alt.* ii. 690; iii. 288) and more decidedly Willems (*Sén. Rom.* i. 498, n. 5) prefer to regard it as a tribunician law and to assign it to 55.

[2] Cf. Polyb. vi. 17. 5; p. 345 above.

[3] Suet. *Caes.* 20; Dio Cass. xxxviii. 7. 4; App. *B. C.* ii. 13. 48; Cic. *Att.* ii. 16. 2; Schol. Bob. 259, 261.

pecuniis repetundis was the most important piece of legislation of his consulship. Comprising at least a hundred and one articles,[1] including much material from earlier laws on extortion, it dealt minutely with all the particulars of the offence, procedure, and punishment so exhaustively as to render further comitial legislation on the subject unnecessary.[2] It aimed to protect alike citizens, provincials, and allies from every form of misrule and oppression by the home and promagisterial authorities. It regulated strictly the supplies due from the provincials to the promagistrate and his officium, including shelter and sustenance for man and beast.[3] Under this law the governor was forbidden without an order from Rome to conduct diplomatic business with foreign states, to wage war, or to cross the boundary of his province,[4] or to demand of the cities crown gold for a triumph not decreed by the senate.[5] On retiring from his command he was to leave copies of his administrative accounts in two cities of his province and an exact duplicate in the aerarium.[6] It provided further for the punishment of corrupt accusers, jurors, and witnesses in cases under the law.[7] A man convicted of the crime was fined and compelled to restore extorted property; and in case his estate did not suffice to cover the loss, an investigation could be made as to who had shared his gains.[8] He was also to be expelled from the senate and banished.[9] The severity of the law is commended by Cicero.[10] Caesar's legislation concerning extortion was reënforced (1) by the judiciary law of P. Vatinius, tribune of the plebs, of the same year, which granted to both accuser and accused greater freedom in the rejection of jurors than had been allowed by the corresponding law of Sulla, the terms of

[1] Cic. *Fam.* viii. 8. 3.

[2] Pompey in his second consulship, 55, attempted in vain to displace it by a still severer measure; p. 448.

[3] Cic. *Att.* v. 10. 2; 16. 3.

[4] Cic. *Pis.* 16. 37; 21. 49 f.; 37. 90; *Dom.* 9. 23; *Prov. Cons.* 4. 7.

[5] Cic. *Pis.* 37. 90.

[6] Cic. *Att.* vi. 7. 2; *Fam.* ii. 17. 2, 4; v. 20. 2, 7; *Pis.* 25. 61; cf. Plut. *Cat. Min.* 38; Dio Cass. xxxix. 23. 3.

[7] *Dig.* xlviii. 11.

[8] Cic. *Rab. Post.* 4. 8 f.; 11. 30.

[9] Suet. *Caes.* 43; *Otho*, 2; Tac. *Hist.* i. 77; Paul. *Sent.* v. 28.

[10] *Vat.* 12. 29. See further on the law, *Sest.* 64. 135; Schol. Bob. 310, 321; Drumann-Gröbe, *Gesch. Roms*, iii. 195–7; Lange, *Röm. Alt.* iii. 292; Mommsen, *Röm. Strafr.* 709; Greenidge, *Leg. Proced.* 427, 483, 485.

which however are not definitely known;[1] (2) by a statute of Q. Fufius Calenus, praetor in 59, which required the three decuries to deposit their votes in three separate urns, the object being to establish class responsibility.[2] The remaining comitial acts of Caesar were merely administrative. As a favor to Pompey, who in his eastern campaign had received support from Ptolemy Auletes, king of Egypt,[3] Caesar in the beginning of his consulship[4] carried a resolution for acknowledging the latter as an ally and friend of the Roman people.[5] Later in the year, to repay Pompey for his support of the agrarian statute, Caesar secured against the will of the senate the enactment of a law for confirming his ally's arrangements in the East.[6] Lastly may be mentioned the lex curiata for the arrogation of P. Clodius Pulcher proposed by Caesar in the capacity of pontifex maximus, a measure considered in an earlier chapter.[7] Clodius wished to qualify himself for the tribunate of the plebs, and his design was aided by Caesar in the expectation that he would occupy the attention of Cicero, the only strong opponent of the triumviri. Caesar's immediate future was provided for by a plebiscite of his friend Vatinius, which granted him Cisalpine Gaul and Illyricum as a province for five years beginning March 1, 59.[8] He was to have three legions[9] and to name his own legati, who were to enjoy propretorian rank.[10]

[1] Cic. *Vat.* ii. 27; *Planc.* 15. 36; Schol. Bob. 235, 321, 323. "It is indifferently described as a method of challenging alternate benches (consilia) and alternate iudices"; Greenidge, *Leg. Proced.* 451. It seems to have permitted the rejection not simply of individual jurors as heretofore, but of an entire panel; Drumann-Gröbe, *Gesch. Roms*, iii. 197.

[2] Dio Cass. xxxviii. 8. 1; Schol. Bob. 235.

[3] Pliny, *N. H.* xxxiii. 10. 136; Joseph. *Ant. Iud.* xiv. 34 f.

[4] Cic. *Att.* ii. 16. 2.

[5] Caes. *B. C.* iii. 107. 6; Suet. *Caes.* 54; Dio Cass. xxxix. 12. 1; Cic. *Rab. Post.* 3. 6.

[6] Dio Cass. xxxviii. 7. 5; App. *B. C.* ii. 13. 46; Plut. *Lucull.* 42; *Pomp.* 48; Vell. ii. 44. 2; Lange, *Röm. Alt.* iii. 289; Drumann-Gröbe, *Gesch. Roms*, iii. 194. Several other laws on foreign affairs, having especial reference to treaties, were proposed and carried by P. Vatinius, tribune of the plebs in this year, acting probably as Caesar's instrument; Cic. *Vat.* 12. 29; *Fam.* i. 9. 7; *Att.* ii. 9. 1.

[7] P. 163.

[8] Dio Cass. xxxviii. 8. 5; Suet. *Caes.* 22; Cic. *Sest.* 64. 135; *Vat.* 15. 35 f.; *Prov. Cons.* 15. 36; Caes. *B. G.* ii. 35. 2; iii. 7. 1; v. 1. 5.

[9] Caes. *B. G.* i. 10.

[10] Caes. *B. G.* i. 21.

The senate, which had looked unwillingly upon these proceedings, now added Comata and a fourth legion, partly because of the conviction that in the face of an imminent war with the Helvetians no one would be willing to take that province without Cisalpina as a support, and partly through fear lest the popular party might gain the additional credit of bestowing it.[1] In one respect the position was far better than that held by Pompey in the East: while winning prestige in a popular conquest[2] and attaching to himself a powerful army, Caesar would be near enough to Rome to control the political situation.[3] Intellectual brilliancy would serve in place of experience. In fact, in addition to maintaining the position of democratic boss of Rome, the outlook seemed to him favorable for wresting from his fellow-triumvir the sceptre of the military monarch.[4]

P. Clodius Pulcher, tribune of the plebs in 58, seems to have worked partly as an agent of Caesar for the more complete organization of democracy, and partly from motives of personal hatred for Cicero. He first proposed a frumentarian plebiscite, which provided for the absolutely free distribution of grain monthly among the citizens resident in Rome.[5] In vain the optimates complained that the abolition of the existing price, which was that prescribed by the Sempronian law,[6]

[1] Suet. *Caes.* 22; Dio Cass. xxxviii. 8. 5; Plut. *Caes.* 14; *Pomp.* 48; *Crass.* 14; *Cat. Min.* 33. The resolutions of people and senate are combined by App. *B. C.* ii. 13. 49; Vell. ii. 44. 5; Zon. x. 6; cf. Drumann-Gröbe, *Gesch. Roms*, iii. 198 f.

[2] Cf. Ferrero, *Rome*, i. 290. [3] Drumann-Gröbe, ibid.

[4] On the consulship of Caesar see further Long, *Rom. Rep.* III. ch. xix; Lange, *Röm. Alt.* iii. 278–96; Herzog, *Röm. Staatsverf.* i. 550–3; Drumann-Gröbe, *Gesch. Roms*, iii. 177 ff.; the histories of Mommsen, Peter, Ferrero, etc., and the various biographies of Caesar.

[5] Cic. *Sest.* 25. 55; Dio Cass. xxxviii. 13. 1; Ascon. 9; Schol. Bob. 300 ff.

[6] Six and a third asses to the modius; p. 372. The frumentarian law of Appuleius Saturninus for lowering the price to five-sixths of an *as* had been annulled (p. 395 f.), and the law in force in 82, whether the Sempronian or the Octavian, was repealed by Sulla (p. 422). Lepidus, consul in 78, carried a law for the distribution of five modii of grain to the citizen, at what price and at what interval is not stated (p. 423, n. 8). There was also a lex frumentaria of the consuls of 73, C. Cassius Varus and M. Terentius Varro (Cic. *Verr.* iii. 70. 163; v. 21. 52; cf. Sall. *Hist.* iii. 48. 19). It must have restored, or maintained, the Sempronian price, which according to the sources was displaced by the Clodian provision for free grain. Probably by an article of this law, rather than by a new enactment, Sex. Clodius, a dependent of the tribune, was given charge of the distribution; Cic. *Dom.* 10. 25. See further Humbert, in Daremberg et Saglio, *Dict.* ii. 1346 f.

would rob the treasury of nearly a fifth of its income.[1] Accepted by the tribes, the law proved a most effective means of maintaining a numerous mob of proletarians ever present and willing to vote for the measures of their political patrons, the leaders of the democracy. A closely related plebiscite permitted the free organization of clubs (collegia),[2] which a senatus consultum of 64 had strictly limited,[3] but which now became an active part of the democratic organization.[4] His legislation, however, was not utterly devoid of statesmanship. A third act, by repealing those articles of the Aelian and Fufian statutes which applied obnuntiations to law-making assemblies, deprived the nobility of their most effective means of controlling legislation.[5] An article of the same statute declared all dies fasti available for legislation.[6] This measure went far toward abolishing a usage which had made religion a mockery and public life a farce. To limit the arbitrary power of the censors, Clodius enacted through a plebiscite that these magistrates should place their stigma upon those only whom they had jointly condemned after having heard sufficient testimony.[7] Another comitial act prohibited the secretaries of the quaestors from engaging in business in the provinces.[8] The last three statutes mentioned were useful reforms. His most famous measure was the law which prescribed the penalty of interdict from fire and water for any one who had put to death a Roman citizen without trial.[9] Strengthening the Sempronian law of appeal,[10] it forced the party issue as to the question whether that act could apply to persons accused of having attempted to overthrow the state. The optimates contended that such persons were no longer citizens but enemies and hence outside the pale of law[11] — a principle which the

[1] Cic. *Sest.* 25. 55.

[2] Cic. ibid.; *Red. in Sen.* 13. 33; Dio Cass. xxxviii. 13. 1 f.; Plut. *Cic.* 30.

[3] Cic. *Pis.* 4. 9; *Sest.* 25. 55; Ascon. 9, 67; Dio Cass. xxxviii. 13. 2; Liebenam, *Röm. Vereinswes.* 21; Waltzing, *Corp. prof.* i. 92.

[4] Cf. Ferrero, *Rome*, i. 300.

[5] P. 117.

[6] Cic. *Sest.* 15. 33; p. 471.

[7] Ascon. 9: Dio Cass. xxxviii. 13. 2; Schol. Bob. 300; cf. Cic. *Pis.* 4. 9; *Sest.* 25. 55.

[8] Suet. *Dom.* 9. 3: Lange, *Röm. Alt.* iii. 308.

[9] Vell. ii. 45. 1; Livy, ep. ciii; Dio Cass. xxxviii. 14. 4; Plut. *Cic.* 30; cf. Drumann-Gröbe, *Gesch. Roms*, ii. 208 f.

[10] P. 371.

[11] We hear many echoes of this theory in the speeches of Cicero which refer to the

populares held to be destructive of liberty. From a democratic point of view the Clodian law was just and necessary; but unfortunately Cicero, who in putting to death the associates of Catiline had simply acted for the senate, was to be made the scapegoat. Fearing condemnation under the law, Cicero voluntarily retired into exile, whereupon a new plebiscite declared the interdict to be legally in operation.[1] In the following year he was recalled with great enthusiasm by a resolution of the comitia centuriata proposed by the consuls P. Cornelius Lentulus and Q. Caecilius Metellus.[2] The same magistrates were authors of a law for conferring upon Pompey the care of the grain supply, which he was to administer five years with unlimited proconsular imperium.[3] In spite of such

Catilinarian conspiracy; cf. *Cat.* ii. 2. 3; 8. 17; iv. 5. 10 (admitted by C. Caesar); 7. 15; 10. 22.

[1] This act accorded with earlier usage; p. 249, 267, 395. On the original rogation of Clodius concerning the exile of Cicero and its amendment, see Gurlitt, in *Philol.* N. F. xiii (1900). 578–83; Sternkopf, ibid. 272–304; xv (1902). 42–70. See also Mommsen, *Röm. Strafr.* 970, n. 2, 978, n. 1.

The remaining Clodian laws may pass with briefer mention: (1) A plebiscite which converted the kingdom of Cyprus into a province, confiscated the property of the reigning king, and commissioned Cato to bring the treasury of the latter to Rome; Livy, ep. civ; Cic. *Dom.* 8. 20; *Sest.* 26. 57; 27. 59; Schol. Bob. 301 f.; Dio Cass. xxxviii. 30. 5; App. *B. C.* ii. 85 f. — (2) The plebiscite de inuriis publicis, the terms of which are not known; Cic. *Dom.* 30. 81. — (3) The plebiscite which transferred the title of king and the priesthood of the Great Mother at Pessinus from Deiotarus to his son-in-law Brogitarus; Cic. *Sest.* 26. 56; *Har. Resp.* 13. 28 f.; 27. 59; *Dom.* 50. 129; *Q. Fr.* ii. 7. 2; Lange, *Röm. Alt.* iii. 308; Niese, in Pauly-Wissowa, *Real-Encycl.* iv. 2401–4. — (4) The plebiscite de provinciis and (5) de permutatione provinciarum, which assigned to the outgoing consuls of the year provinces according to their desires; Cic. *Sest.* 25. 55; *Dom.* 9. 23 f.; 26. 70; *Prov. Cons.* 2. 3; Plut. *Cic.* 30; (Aurel. Vict.) *Vir. Ill.* 81. 4. There were, too, several unpassed rogations. In general on Clodius and his legislation, see Lange, ibid. 296 ff.; Long, *Rom. Rep.* III. ch. xxi; Drumann-Gröbe, *Gesch. Roms*, ii. 202 ff.; Fröhlich, in Pauly-Wissowa, *Real-Encycl.* iv. 82–8; White, *Cicero, Clodius, and Milo*, 16 ff.

[2] Cic. *Dom.* 33. 90; *Pis.* 15. 35 f.; *Red. in Sen.* 11. 27; p. 127 above. Among the tribunician rogations for the purpose, preceding the enactment of the centuriate law, were the Ninnia (Dio Cass. xxxviii. 30. 4; Cic. *Sest.* 31. 68), the Messia (Cic. *Red. in Sen.* 8. 21), that of eight tribunes (Cic. *Sest.* 33. 72; *Pis.* 15. 35; *Fam.* i. 9. 16), and the Fabricia (Cic. *Red. in Sen.* 8. 22; *Mil.* 14. 38). The last was proposed early in 57; the others near the end of 58.

[3] Cic. *Att.* iv. 1. 7; Livy, ep. civ; Dio Cass. xxxix. 9. 2 f.; Plut. *Pomp.* 49; App. *B. C.* ii. 18. 67.

In 56 a rogation of C. Porcius Cato, tribune of the plebs, for abrogating the pro-

efforts to prop up his power in order to counterpoise that of Caesar, the latter through the prestige of his brilliant victories in Gaul and the liberal use of money in the capital far outshone his fellow-triumviri. The only hope for their ambition was to be found in the good will and favor of the great proconsul. As the result of the conference held by the triumviri at Luca, 56, Pompey and Crassus were elected to a second consulship for 55 through the votes of Caesar's soldiers, who were given a furlough to attend the comitia held purposely late in the year.[1] As proconsuls Pompey and Crassus were to be given advantageous commands, and Caesar was to receive as his reward a prolongation of his governorship.[2] Subservient tribunes were found to propose the desired measures, and it had long been an easy matter to obtain a majority in favor of any conceivable bill. C. Trebonius drew up a law for granting Syria to Crassus and the two Spains to Pompey for a period of five years, with a dispensation for both from that article of the lex Iulia repetundarum which forbade promagistrates of their own free will to declare war.[3] The intercessions of tribunes and all other opposition were violently overborne, and the rogation was readily accepted by the people.[4] Thereupon the two consuls secured the passage of an act for extending Caesar's command.[5]

Notwithstanding the fact that these consuls had been elected with the help of the clubs organized under the Clodian law of 58, they must have felt such associations to be a menace to themselves as well as to the public peace. Crassus accordingly

consular imperium of P. Cornelius Lentulus failed to become a law (Cic. *Q. Fr.* ii. 3. 1; *Fam.* 1. 5 a. 2); also the rogation of his colleague L. Caninius for commissioning Pompey with pretorian power for the purpose of restoring Ptolemy, the exiled king of Egypt, to his throne; Dio Cass. xxxix. 12 ff.; Cic. *Q. Fr.* ii. 2. 3; Plut. *Pomp.* 49.

[1] An interregnum was forced in order to secure a more favorable chairman for the elections than were the consuls of 56.

[2] Plut. *Caes.* 21; *Pomp.* 51; *Crass.* 14; *Cat. Min.* 41; App. *B. C.* ii. 17. 62 f. The postponement of the comitia was effected by C. Porcius Cato (Dio Cass. xxxix. 27. 3; Livy, ep. cv; Cic. *Q. Fr.* ii. 4. 6) and a colleague in the tribunate (Cic. *Att.* iv. 15. 4).

[3] Cic. *Att.* iv. 9. 1; Dio Cass. xxxix. 33. 1 f.; Plut. *Cat. Min.* 43; *Crass.* 15; *Pomp.* 52; App. *B. C.* ii. 18. 65; Livy, ep. cv; Vell. ii. 46. 1 f.; p. 442 above.

[4] Dio Cass. xxxix. 34 f.; Plut. and Livy, ibid.

[5] Dio Cass. xxxix. 33. 3 f.

carried through the assembly a lex de sodaliciis, which increased the penalty for ambitus committed through the agency of clubs.[1] It also ordered that the jury in such cases be made up by the accuser from any four tribes he should choose, however unfavorable they might be to the accused,[2] who had merely the right to reject one of the four tribal decuries thus presented,[3] in so far as the court itself did not grant him the further privilege of rejecting individuals.[4] It is difficult to understand how impartial justice could be administered under such a law. But no further legislation concerning ambitus was attempted till 52, when Pompey in his third consulship carried a statute which increased the penalty for the offence and made the procedure more strict.[5] The attention of Pompey in his second consulship was directed rather to other classes of crimes. First he had a statute adopted concerning parricide (the murder of a near relative or patron), which hitherto had been provided for by the Cornelian lex de sicariis et veneficis.[6] His project for displacing the lex Iulia repetundarum by a statute which should make the non-senatorial class specifically responsible failed to become a law.[7] A sumptuary rogation for restricting personal expenditure he voluntarily withdrew on the advice of Hortensius, who persuaded him that luxury and delicacy of life were but the fitting adornments of empire.[8] His lex iudiciaria ordered the urban praetor to begin the selection of jurors from the wealthiest of each of the three classes, and thence to descend gradually to the poorer members, the object being to make the composition of the courts as aristocratic as the terms of the Aurelian statute of 70 would allow.[9] The lex de vi of

[1] Dio Cass. xxxix. 37. 1. [2] Cic. *Planc.* 15. 36; 16. 40; 17. 41.

[3] Ibid. 15. 36 ff.; Schol. Bob. 253 f., 261.

[4] Cic. *Planc.* 16. 40; Schol. Bob. 262; Lange, *Röm. Alt.* iii. 340 f.

[5] Cic. *Att.* x. 4. 8; xiii. 49. 1; App. *B. C.* ii. 23. 87; Dio Cass. xl. 52. 3; 55. 2; Plut. *Cat. Min.* 48; *Pomp.* 55.

[6] Paul. *Sent.* v. 24; *Dig.* xlviii. 9; cf. i. 2. 2. 2. 32, which is inexact; Lange, *Röm. Alt.* ii. 667.

[7] Cic. *Rab. Post.* 6. 13. As the equites did not participate in the government of Italy and the provinces, they had not been rendered liable to the earlier leges repetundarum, although it was possible to bring action against them for corrupt jury service; cf. p. 378, n. 3. [8] Dio Cass. xxxix. 37.

[9] Cic. *Pis.* 39. 94; *Phil.* i. 8. 20; Ascon. 16; Pseud. Sall. *Rep. Ord.* ii. 3. 2 f.; cf. 7. 11 f.; 12. 1; cf. Greenidge, *Leg. Proced.* 448.

his third consulship, 52, was merely for the appointment of a special commission to try those who were accused of having murdered Clodius, burned the Curia, and besieged the house of the interrex M. Aemilius Lepidus. It determined the composition of the court and the penalty to be inflicted.[1] Of his statute de iure magistratuum, passed in the latter year, that article only is known which reiterated the law of 63 for prohibiting candidacies in absentia. But as a plebiscite had been passed earlier in the year to dispense Caesar from the law of 63,[2] and as Pompey did not dare antagonize him by abolishing the plebiscite here mentioned, he secured the adoption of an additional law for excepting such candidates as had been or should be dispensed by comitial action.[3] But Caesar's prospect of passing immediately from his Gallic command to a second consulship was more effectually blocked by Pompey's lex de provinciis, which, embodying a senatus consultum of the previous year,[4] ordered that five years should intervene between the expiration of a magistracy and the beginning of the corresponding promagistracy.[5] The general purpose was to dampen the ardor of the ambitious, who sought praetorships and consulships merely as a stepping-stone to lucrative and influential commands in the provinces. Its immediate effect, however, was to precipitate the conflict between Caesar and Pompey which brought the republic to ruin. The relation of the law to this event requires explanation. In the Pompeian-Licinian act of 55 for prolonging Caesar's command measures were taken that the senate should not discuss the question of succession to him before March 1, 50. According to the Sempronian law,[6] therefore, the senate could assign his provinces to no consuls earlier than those of 49; hence Caesar would continue in command during that year while suing for the consulship for 48. But by the Pompeian law of 52 the Sempronian was abolished, and the

[1] Cic. *Mil.* 5. 13; 6. 15; 26. 70; 29. 79; Ascon. 31 ff., 37, 40, 53; Schol. Bob. 276; Schol. Gronov. 443; Gell. x. 20.

[2] Cic. *Att.* vii. 1. 4; 3. 4; viii. 3. 3; *Fam.* vi. 6. 5; xvi. 12. 3; *Phil.* ii. 10. 24; Suet. *Caes.* 26; Caes. *B. C.* i. 32; Dio Cass. xl. 51. 2.

[3] Dio Cass. xl. 56. 1; Suet. *Caes.* 28. 3.

[4] Dio Cass. xl. 46. 2.

[5] Ibid. and 56. 1; cf. 30. 1.

[6] P. 381.

senate was given an opportunity to appoint a successor to him on or after March 1, 50.[1]

From the close of the second consulship of Pompey to the beginning of Caesar's dictatorship there was no important legislation.[2]

III. *The Decline of the Republican Comitia*

From 49 to about 30

With the dictatorship of Caesar begins the last stage in the life of the republican comitia. For them it was from the beginning of his supremacy essentially a time of decline. Although Caesar continued to submit his plans to the assemblies for legalization, he rapidly concentrated in his own person powers and functions hitherto exercised by the people; and the triumviri, his successors, after a sham-republican interregnum, constituted in law as well as in fact a three-headed despot. Mention will first be made of the comitial acts which conferred powers and honors on Caesar during his life. In 49 when news of his success in Spain reached Rome, M. Aemilius Lepidus, a partisan who was then urban praetor, persuaded the tribes to adopt a resolution empowering the author to name Caesar dictator.[3]

[1] Hirschfeld, in *Klio*, iv (1904). 76–87; Drumann-Gröbe, *Gesch. Roms*, iii. 720 ff.

[2] It suffices to mention (1) the unpassed bill of C. Lucilius Hirrus and M. Coelius Vinicianus, 53 (in rivalry with a tribunician rogation for the establishment of tribuni militum consulari potestate), to name Pompey dictator; Cic. *Fam.* viii. 4. 3; *Q. Fr.* iii. 8. 4; Plut. *Pomp.* 54. — (2) The repeal of the Clodian plebiscite of 58 concerning the censorial stigma (p. 445) by a law of Q. Caecilius Metellus, colleague of Pompey in 52; Dio Cass. xl. 57. 1. — (3) The unpassed bill of the famous P. Clodius, praetor in 52, concerning the suffrage of the libertini — somewhat similar to the Manilian law of 67 (p. 433); Ascon. 52; Schol. Bob. 346. — (4) Possibly a lex Scribonia de usucapione servitutum was the work of C. Scribonius Curio, tribune in 50, though more probably it belongs to an earlier date; p. 424, n. 4. — (5) An unpassed alimentary rogation of the same Scribonius for ordering the aediles to control the weights and measures of the markets in a way to give justice to the poor; Cic. *Fam.* viii. 6. 5; App. *B. C.* ii. 27. 102. — (6) Another unpassed Scribonian bill for limiting the travelling expenses of senators; Cic. *Att.* vi. 1. 25. — (7) An unpassed Scribonian bill concerning the Campanian land; Cic. *Fam.* viii. 10. 4. — (8) An unpassed Scribonian rogatio viaria, like the agrarian rogation of Servilius Rullus (p. 435); Cic. *Fam.* viii. 6. 5. — (9) An unpassed Scribonian bill for confiscating the realm of King Juba; Caes. *B. C.* ii. 25; Dio Cass. xli. 41. 3. One or two other unpassed bills of the same tribune are still less important.

[3] Dio Cass. xli. 36. 1 f.; Caes. *B. C.* ii. 21; App. *B. C.* ii. 48. 196; Plut. *Caes.* 37.

Entering upon this office after his return to Rome, about the end of November, Caesar used it to secure the ratification of laws — to be considered hereafter — and to hold the electoral comitia. After eleven days he resigned. At this election he was chosen consul with P. Servilius Vatia as colleague.[1] About the middle of October, 48, when the senate and people heard of the death of Pompey, they conferred on him by law (1) absolute judicial authority over the partisans of Pompey,[2] (2) the right to make peace and war at his own pleasure, the pretext being the development of opposition to him in Africa, (3) the right to be candidate for the consulship five years in succession,[3] (4) the dictatorship for an indefinite period, to which he was appointed by his colleague in the consulship,[4] (5) the tribunician authority for life, with the privilege of sitting with the tribunes, (6) the right to preside at the election of all patrician magistrates, for which reason the comitia were postponed till his return to the city, (7) the right to assign the pretorian provinces according to his own judgment, (8) the right to triumph over Juba, king of Mauretania, though at that time he did not know there was to be a war with that state.[5] Near the end of April, 46, when news came of the victory at Thapsus, the Romans granted him (1) the censoria potestas with the title of praefectus morum for three years, (2) the annual dictatorship for ten years, (3) the right to nominate candidates for both ordinary and extraordinary offices. These powers were doubtless conferred by comitial action. At the same time great honors were heaped upon him, probably through senatus consulta.[6] Again in April, 45, after the battle of Munda honors were showered on him in still greater profusion.[7] Politically the most important were the lifelong, hereditary title of imperator, which he bore as a second

[1] Caes. *B. C.* iii. 2; App. *B. C.* ii. 48. 196 f.; Plut. *Caes.* 37.

[2] Here seems to belong the plebiscite of A. Hirtius concerning the partisans of Pompey (Cic. *Phil.* xiii. 16. 32; *CIL.* i. p. 627 f.; Willems, *Sén. Rom.* i. 592), though Mommsen (*CIL.* l. c.) assigns it to 46.

[3] Dio. Cass. xlii. 20.

[4] Ibid. 21. That his appointment was for an indefinite time, not for a year as Dio Cassius, ibid. 20, states, is proved by *CIL.* i.[2] p. 28, 41. He held the office till news of the victory at Thapsus reached Rome.

[5] Dio Cass. xlii. 20.

[6] Dio Cass. xliii. 14; cf. Drumann-Gröbe, *Gesch. Roms*, iii. 48 f.

[7] Dio Cassius, xliii. 42–6, describes them at great length, whereas Suetonius, *Caes.* 76, is content with a brief enumeration.

cognomen,[1] the sole right to command soldiers and to manage the public funds, the privilege of being consul ten years in succession (which he did not use), the prefecture of morals and the dictatorship for life, and finally deification under the title of the "Invincible God."[2] In fact for the remainder of his life there was no cessation in the bestowal of divine and human honors. Among those of his last year were the tribunician sanctity[3] and the right to have as many wives as he pleased — the latter granted by a plebiscite of C. Helvius Cinna.[4] The theocratic monarchy which the Romans were erecting for him on the ruins of the republic left no independence to the senate or the assemblies. The functions of the latter were especially abridged by the large power of nominating and appointing officials possessed by the monarch.[5] His important legislative plans, however, he brought before the people, preferably in their tribal comitia.

In December, 49, after returning from Spain, Caesar sought to relieve somewhat the distress of debtors and at the same time to quiet the general fear that he might decree a cancellation of all debts.[6] This object he accomplished through a law, (1) that interest already paid should be deducted from the principal, (2) that the property of the debtor should be taken in payment of the balance — not at the low values then existing, but on the basis of ante-bellum prices, (3) that no one should hoard more than fifteen thousand denarii in cash.[7] The third article was a renewal of an old law.[8] Another statute,[9] 47, released from a

[1] Dio Cass. xliii. 44; *CIL.* ix. 2563; cf. Mommsen, *Röm. Staatsr.* ii. 767, n. 1.

[2] The right to the consulship was granted according to Dio Cassius, xliii. 45. 1 (προεχειρίσαντο), by a vote of the people. In general it is impossible to determine which senatus consulta for conferring these and future honors were ratified by the comitia. The perpetual dictatorship was assumed February, 44; Drumann-Gröbe, *Gesch. Roms*, iii. 739.

[3] Dio Cass. xliv. 5. 3.

[4] Ibid. 7. 3; Suet. *Caes.* 52. 3. Two laws of the consul M. Antonius were also enacted in his honor, the first changing the name of the month Quinctilis to Julius (Macrob. *Sat.* i. 12. 34), the second dedicating to Caesar the fifth day of the Roman games (Cic. *Phil.* ii. 43. 110).

[5] Cf. Bondurant, *Dec. Jun. Brut.* 40.

[6] Caes. *B. C.* iii. 1; Cic. *Att.* vii. 11. 1.

[7] Caes. *B. C.* iii. 1; Suet. *Caes.* 42; Dio Cass. xli. 37 f.; App. *B. C.* ii. 48. 198; Plut. *Caes.* 37. Possibly the lex Iulia de bonorum cessione (Gaius iii. 78; Theod. Cod. iv. 20; Justin. Cod. vii. 71. 4) may be identical with this law.

[8] Dio Cass. xli. 38. 1 f.; Cic. *Att.* ix. 9. 4.

[9] Agitation leading to this measure found expression in a rogation of M. Caelius Rufus, praetor in 48, for the payment of debts in six years without interest (Caes.

year's rent tenants of houses in Rome which brought the owner more than 2000 sesterces or of houses outside the city which earned more than 500.[1] These houses were private property, and the law was therefore a partial abolition of private debts.[2] Such prosperity came that in another year, 46, Caesar found it possible to cut down the number who received free grain from 320,000 to 150,000.[3] He provided for the surplus population as well as for his veterans by colonies in Gaul, Spain, Africa, Macedonia, Greece, and Asia.[4] Eighty thousand citizens found homes in these provincial settlements.[5]

Among Caesar's most admirable traits was his liberality in restoring to their civil rights those who were under disfranchisement and in granting the citizenship to aliens. At his suggestion M. Antonius, tribune of the plebs in 49, secured the enactment

B. C. iii. 20) and somewhat later in a rogation for an extensive, perhaps complete, abolition of debts (Caes. *B. C.* iii. 21; Livy, ep. cxi; Vell. ii. 68. 1 f.; Dio Cass. xlii. 22–5); in a rogation of P. Cornelius Dolabella, tribune of the plebs in 47, for the complete abolition of debts (Livy, ep. cxiii; Plut. *Ant.* 9; Dio Cass. xlii. 29. 32); and in rogations by these two officials respectively for the remission of rents (treated by the sources in connection with their bills on insolvency).

[1] Suet. *Caes.* 38; Dio Cass. xlii. 51. 1.

[2] On the similar measure of Octavianus, see p. 459. See also Lange, *Röm. Alt.* ii. 694; iii. 435.

[3] This measure seems to have been brought about by no law but merely through his censorial power; Lange, *Röm. Alt.* iii. 448; Drumann-Gröbe, *Gesch. Roms*, iii. 557.

[4] A Julian colonial law is mentioned by *Lex Col. Genet.* 97. The veterans were settled in Italy probably under the agrarian law of 59; Suet. *Caes.* 81. 1. The known colonies founded under the dictatorial law are included in Kornemann's list, in Pauly-Wissowa, *Real-Encycl.* iv. 524 ff.; cf. Drumann-Gröbe, *Gesch. Roms*, iii. 604–6. His most famous colonies were Carthage (App. *Lib.* 136; Dio Cass. xliii. 50. 3 f.; Plut. *Caes.* 57; Strabo xvii. 3. 5) and Corinth (Dio Cass. ibid. § 4; Plut. ibid.; Strabo viii. 6. 3; xvii. 3. 15; Paus. ii. 1. 2; 3. 1). The colonia Genetiva Iulia Urbanorum in Spain was founded in 44 after the death of Caesar, but iussu C. Caesaris dict. imp. et lege Antonia senat(us)que c(onsulto) pl(ebi)que (scito) — by a consular law of Antonius for the founding of the colony, supplemented by a plebiscite of unknown authorship.

The inscription known as the lex Coloniae Genetivae Iuliae (*CIL.* ii. supplb. 5439; Bruns, *Font. Iur.* 123–40; Girard, *Textes*, 87–103) is a part of the lex data (§ 67), or charter, granted the colony by its founder. It was called Urbanorum because it was made up of proletarians from Rome; cf. Kornemann, ibid. 527.

[5] Suet. *Caes.* 42. At the same time measures were taken to prevent those residents of Italy who were liable to military service from absenting themselves unduly from the country. To give employment to the poor, the owners of herds were ordered to make up one-third of their shepherds from freemen; ibid.

of a plebiscite for restoring the ius honorum to the children of those whom Sulla had proscribed.[1] Near the end of the same year, also at his request, the praetors and tribunes brought before the people and carried proposals for the recall of certain persons who had been exiled, unjustly as he believed, under the Pompeian law on ambitus.[2] It was further at his suggestion that L. Roscius, probably praetor, enacted a comitial law for granting the citizenship to the Transpadani who at this time possessed simply the ius Latii.[3] Another law of unknown authorship confirmed the grant of the franchise already made on his own responsibility to the people of Gades.[4]

Among his administrative improvements was the increase in the number of praetors from eight to ten[5] in 47, for which a comitial statute may be assumed.[6] The people surrendered to

[1] Dio Cass. xli. 18. 2; xliv. 47. 4; Plut. *Caes.* 37; Suet. *Caes.* 41; cf. Lange, *Röm. Alt.* iii. 416.

[2] Caes. *B. C.* iii. 1; cf. Suet. *Caes.* 41.

[3] Cic. *Phil.* xii. 4. 10; Tac. *Ann.* xi. 24; Dio Cass. xli. 36. 3; cf. xxxvii. 9. 3–5. Mommsen, *Röm. Staatsr.* iii. 134; 159, n. 1; Krüger-Brissaud, *Sourc. d. droit Rom.* 97, for the authorship of the law.

The so-called lex Rubria de Gallia Cisalpina (*CIL.* i. 205 = xi. 1146; Bruns, *Font. Iur.* 98–102; Girard, *Textes*, 70–76) seems to be a lex data, probably of 49 [Mommsen, in *Wiener Studien*, xxiv (1902). 238 f.; *Ephem. Ep.* ix. 1903. p. 4]. As the lex Rubria cited in § 20 is not this document but an earlier plebiscite, the name of the author has not been determined. It regulated the administration of justice in Cisalpina, which remained a province till 42. The fragment of a law found at Ateste (Bruns, ibid. 102 f.; Girard, *Textes*, 76–8) is of the same nature and belongs to the same period, though probably not to the Rubrian law itself, as Mommsen (*Hermes*, xvi. 24–41) once assumed.

[4] Dio Cass. xli. 24. 1; cf. Livy, ep. cx. The monarchical quality of his rule shows itself in his bestowal of the citizenship on individuals at his own pleasure; cf. Mommsen, *Röm. Staatsr.* iii. 134.

In 44 the lex Iulia de Siculis, published by Antonius after the death of Caesar, gave the full citizenship to the Sicilians, who had received the Latinitas from Caesar. This law, Antonius asserted, had been carried through the comitia by the dictator, whereas Cicero, *Att.* xiv. 12. 1, states positively that no mention was even made of such a proposition in the dictator's lifetime.

[5] Dio Cass. xlii. 51. 4; Suet. *Caes.* 41; wrongly Pomponius, in *Dig.* i. 2. 2. 32. The two additional aediles (cereales) were not instituted till 44; Dio Cass. xliii. 51. 3.

[6] Dio Cass. xlii. 51. 3; cf. Lange, *Röm. Alt.* iii. 437; p. 416 above. The addition of one to the fifteen members of the great sacerdotal colleges (Dio Cass. ibid.; cf. Cic. *Fam.* xiii. 68. 2) refers to his right to commend candidates for supernumerary membership (Wissowa, in Pauly-Wissowa, *Real-Encycl.* ii. 2317), and hence does not imply a comitial act.

him a large part of their electoral right through the plebiscite of L. Antonius,[1] December, 45, which granted him the privilege of nominating and presenting to the comitia a half of the candidates below the consulship.[2] The degradation into which the ordinary magistracies had been brought by the supremacy of Caesar is indicated by the deposition of two tribunes of the plebs, C. Epidius Marullus and L. Caesetius Flavus, because of their opposition to monarchy, 44, through a plebiscite of their colleague, C. Helvius Cinna.[3]

To the year 46 belongs Caesar's legislation on judicial matters. First disqualifying the tribuni aerarii for jury service,[4] he ordered through the comitia that the courts be composed exclusively of the senators and knights.[5] The man who had been carried to supreme power on the shoulders of the common people now spurned even the most respectable of their number from association with himself in the administration.[6] It is known that he enacted laws on individual crimes.[7] A lex de vi and a lex de maiestate are mentioned,[8] but it is not known in what they differed from those of earlier or later date.[9] His sumptuary statute of the same year[10] restricted the expense of the table,[11]

[1] Cic. *Phil.* vii. 6. 16.

[2] Suet. *Caes.* 41; cf. Dio Cass. xliii. 51. 3. The pretext was the impending Parthian war. In 46 he had been given the right to name all the magistrates but had rejected it; Dio Cass. xliii. 14. 5; 45. 1; 47. 1; cf. Drumann-Gröbe, *Gesch. Roms*, iii. 612, n. 3.

[3] Livy, ep. cxvi; Dio Cass. xliv. 10. 1–3; xlvi. 49. 2. In the following year a tribune was similarly deposed by a plebiscite of P. Titius, a colleague (Dio Cass. xlvi. 49. 1); and in 43, before the establishment of the triumvirate, the city praetor was deprived of his office by his colleagues, probably through a comitial act; App. *B.C.* iii. 95. 394 f.; Mommsen, *Röm. Staatsr.* i. 630, n. 4.

[4] P. 427.

[5] Suet. *Caes.* 41; Dio Cass. xliii. 25. 1. Cicero, *Phil.* i. 8. 19, intimates, without positively stating, that this was a centuriate law; p. 236 above.

[6] Cf. Lange, *Röm. Alt.* iii. 455; Drumann-Gröbe, *Gesch. Roms*, iii. 558.

[7] We are informed that he increased the penalties for crimes, and enacted that a person condemned to exile should forfeit half his estate, and the murderer of a relative the whole; Suet. *Caes.* 42; cf. Dio Cass. xliv. 49. 3.

[8] Cic. *Phil.* i. 9. 23.

[9] The Julian laws on these subjects in the *Digesta*, xlviii. 4 (de maiestate), 6 f. (de vi) prove by their contents to belong to Augustus; Drumann-Gröbe, *Gesch. Roms*, iii. 560. 4; cf. Lange, *Röm. Alt.* iii. 455. The leges Iuliae which abolished what remained of the legis actiones (Gaius iv. 30) are also supposed to belong to Augustus; Poste, *Gaius*, 474.

[10] Cic. *Att.* xiii. 7.

[11] Cic. *Fam.* ix. 15. 5; 26. 3; Suet. *Caes.* 43.

sepulchral monuments, dwellings,[1] furniture, clothing, jewels, and other luxuries, covering the ground in great detail.[2] A Cassian plebiscite empowered him to recruit the patrician rank[3] — a means of creating a nobility devoted to himself, while supplying a religious need. A law proposed by himself (de provinciis) limited proconsuls to two years of command and propraetors to one,[4] that in future they might not acquire such strength as to overthrow the civil authority, after the pattern set by the author of the regulation. It was by a vote of the people, too, that the famous lex Iulia municipalis was adopted, probably in the autumn of 46.[5] Although there has been much controversy regarding the nature of the document,[6] it is most probably a general municipal statute. Far from exhaustive, it had to be supplemented by special laws for the several cities.[7] The extant fragment, which seems to begin with the second table, regulates (1) applications of citizens resident at Rome for free grain,[8] (2) the aedilician supervision of the streets, build-

[1] Cic. *Att.* xii. 35; 36. 1.

[2] Cic. *Att.* xiii. 7; Suet. *Caes.* 43; Dio Cass. xliii. 25. 2; cf. Drumann-Gröbe, *Gesch. Roms*, iii. 559; Lange, *Röm. Alt.* iii. 450. The officials failed to enforce it effectively; Suet. ibid.

[3] P. 164.

[4] Dio Cass. xliii. 25; Cic. *Phil.* i. 8. 9; iii. 15. 38; v. 3. 7; viii. 9. 28. The lex Iulia et Titia, which gave provincial governors the right to name tutors (Gaius i. 185, 195; Ulp. xi. 18; frag. d. Sin. 20; *Inst.* i. 20) may be a part of the lex de provinciis (Voigt, *Röm. Rechtsgesch.* i. 840 f.), or a supplement to it. The expression may refer either to one law or to two related laws. The Julian lex de liberis legationibus, limiting their duration (Cic. *Att.* xv. 11. 4), also belongs to 46.

[5] *CIL.* i. 206; Bruns, *Font. Iur.* 104–13; Dessau, ii. 6085; Girard, *Textes*, 78–87. The extant fragment, originally known as the Table of Heraclea (Lucania) from the place where it was found, is inscribed on a bronze tablet now in the National Museum at Naples. As it disqualified for office any who had taken part in the proscriptions (§ 121), it must have followed the downfall of the Cornelian régime in 70, and the mention of the month Quinctilis (§ 98) proves that it preceded the renaming of that month in 43. A reference to one of its provisions (§§ 94, 104) by Cicero, *Fam.* vi. 18. 1 (Jan., 45) as of a law freshly passed, proves it to be no later than January, 45; cf. Savigny, *Verm. Schr.* iii (1850). 279–412; Karlowa, *Röm. Rechtsgesch.* i. 438; Girard, *Textes*, 78. It must have been passed, therefore, before Caesar set out for Spain, about November, 46; Drumann-Gröbe, *Gesch. Roms*, iii. 569.

[6] For the various hypotheses, see Hackel, in *Wiener Studien*, xxiv (1902). 552–62.

[7] Kalb, in *Jahresb. ü. Altwiss.* 1906. 37. The identification of this law with the lex Iulia municipalis cited in an inscription found at Padua (*CIL.* v. 2864) and with the lex municipalis of the *Digesta* (1. 9. 3; *Cod.* vii. 9. 1), proposed by Savigny, ibid., is not certain; Girard, *Textes*, 78.

[8] *Lex Iul. Mun.* 1–19.

ings, and games of the capital,[1] (3) the qualifications for the magistracies and the decurionate in the municipia,[2] (4) the introduction of the Roman census in the municipia,[3] and (5) of individual Roman statutes in those municipia which enjoyed the laws of Rome.[4] The inclusion of the capital with the cities of Roman rights throughout the empire in one general law marks the first step in the monarchical process of reducing Rome to the level of the municipia.[5]

In comparison with the amount of reform work undertaken by Caesar the legislative activity of the people was remarkably slight. The growth of the monarchy wrought the decline of the comitia as well as of the senate; and the assassination of the monarch brought equally to the republic and to the assemblies but a short interval of pretended liberty.[6] A lex proposed by the consul M. Antonius confirmed the acts of Caesar and established as law the plans which he left in writing at his death.[7] It was arbitrarily used by the consul

[1] *Lex Iul. Mun.* 20–82.

[2] Ibid. 83–142.

[3] Ibid. 143–59.

[4] Ibid. 160–4.

[5] Savigny, *Verm. Schr.* iii. 329, was of the opinion that the inclusion of articles 1 and 2 with articles 3–5 formed a lex satura (p. 396) having no other motive than convenience. Hackel, *Wien. Stud.* xxiv. 560, supposes that Caesar had intended to bring the provisions of this measure before the comitia as two separate laws, but in his haste to be off for Spain, combined them in one. At all events the interpretation given above is true of the result if not of the intention.

[6] Many of his regulations were effected through edicts. Such were probably the imposition of duties on goods imported into Italy — an abolition of the law of 60 (Suet. *Caes.* 43; cf. p. 438), the leasing of the emery mines in Crete (*Dig.* xxxix. 4. 15), and the suppression of the collegia which had been organized under the Clodian law of 58; Suet. *Caes.* 42; Joseph. *Ant. Iud.* xiv. 10. 8. 213 ff.; Lange, *Röm. Alt.* iii. 435; Liebenam, *Röm. Vereinswes.* 27.

[7] Cic. *Phil.* v. 4. 10; App. *B. C.* iii. 5. 16; 22. 81; Dio Cass. xliv. 53. 2; xlv. 23. After the Antonian laws had been annulled by the senate, February, 43, on the ground that they had been passed with violence and contrary to the auspices (Cic. *Phil.* vi. 2. 3; Dio Cass. xlv. 27), the acts of Caesar are confirmed anew by a centuriate law of C. Vibius Pansa, consul in that year; Cic. *Phil.* x. 8. 17; Lange, *Röm. Alt.* iii. 526. The policy of using the departed Caesar as a means of self-aggrandizement readily lent itself to Octavianus, at whose instigation Q. Pedius, his colleague in the consulship in 43, caused a comitial act to be passed for the establishment of a special court to try the murderers of the dictator. The act specified the punishment to be inflicted on the guilty and offered rewards to informers; Vell. ii. 69. 5; Suet. *Ner.* 3; *Galb.* 3; Dio Cass. xlvi. 48 f.; App. *B. C.* iii. 95; Aug. *Mon. Ancyr.* i. 10; Mommsen, *Röm. Strafr.* 199.

The lex Rufrena in honor of Caesar (*CIL.* i. 626) probably belongs to 42;

for legalizing every whim of his own. His colonial law, passed shortly after Caesar's assassination,[1] seems to have been used by him for establishing in Italy a permanent support for himself.[2] The last known agrarian law of the republic is that of his brother, L. Antonius, tribune of the plebs in the same year, 44. It ordered the distribution of the Pomptine marshes — which the author asserted were then ready for cultivation[3] — and other extensive tracts.[4] The execution of the measure was in the hands of septemviri,[5] including the author[6] and his two brothers.[7] It was annulled in the following year by the senate on the ground that it had been violently passed.[8]

Meantime the consul Antonius continued his legislation. An arbitrary act restored to the pontifical college its ancient right to appoint its chief in place of the long-used election by seventeen tribes.[9] Next to colonization, however, his chief legislative interest was in the reform of the courts. He repealed the Julian statute concerning the qualifications of jurors;[10] and instead of restoring the eligibility of the tribuni aerarii, he made up a third decury of retired centurions and other veterans.[11] His law for granting an appeal to the people from the quaestiones de vi and de maiestate,[12] had it remained in force, would as Cicero asserts have abolished these courts and have given free rein to mob violence, such as comitial trials for

Lange, ibid. 556; Herzog, *Röm. Staatsverf.* ii. 89, n. 3. In the same year falls the lex of the triumvirs which changed the birthday of Caesar from July 12 to 5 (Fowler, *Rom. Fest.* 174) and compelled all to celebrate it; Dio Cass. xlvii. 18. 5.

[1] Cic. *Phil.* v. 4. 10; *Lex Col. Genet.* 104.

[2] Lange, *Röm. Alt.* iii. 499. After this law had been annulled by a senatus consultum (p. 457, n. 7), the settlements made by Antonius were confirmed by a centuriate law of C. Vibius Pansa, consul in 43; Cic. *Phil.* xiii. 15. 31.

[3] Dio Cass. xlv. 9. 1.

[4] Cicero, *Phil.* v. 3. 7, says all Italy; 7. 20; vi. 5. 13.

[5] Ibid. v. 7. 21; vi. 5. 14; viii. 9. 26; xii. 9. 23.

[6] Ibid. v. 7. 21; vii. 6. 17.

[7] Ibid. ii. 38. 99; v. 12. 33; *Att.* xv. 19. 2.

[8] Cic. *Phil.* v. 3; vi. 5. 14; xi. 6. 13.

[9] Dio Cass. xliv. 53. 7; cf. Livy, ep. cxvii; Vell. ii. 63. 1; cf. p. 341, 391. No comitial act is suggested, and it may have been one of the false laws of Caesar. Ferrero's theory (*Rome*, iii. 38) has nothing in its favor.

[10] P. 455.

[11] Cic. *Phil.* i. 8. 19; v. 5 f.; viii. 9. 27; cf. Greenidge, *Leg. Proced.* 449 f. This law with his others was annulled in the following year by the senate; Cic. xiii. 3. 5; p. 457, n. 7.

[12] Cic. *Phil.* i. 9. 21 f.

these crimes must necessarily be under conditions as they then existed.[1] Popularity was the aim of this measure as well as of his lex which forever abolished the dictatorship. Along with all his other laws they were annulled by the senate in February 43.[2]

The establishment of the triumviri rei publicae constituendae in 43 practically abolished the functions of the comitia, as these three potentates usurped the right of filling all offices by appointment and of managing affairs according to their pleasure without consulting either the senate or the people.[3] The power they had seized was legalized for a period of five years by the plebiscite of P. Titius, November 43, passed without regard to the trinundinum.[4] The reference of business to the people was thereafter a rare indulgence. It may have been through a comitial act that the triumviri resolved upon building a temple to Serapis and Isis in the first year of their rule.[5] We are less certain that the measure of Octavianus in 41 for a partial remission of rents was offered to the people.[6] To the year 40 belongs the lex Falcidia, of P. Falcidius, tribune of the plebs, which permitted a man to bequeath no more than three-fourths of his estate, leaving one-fourth to his natural heirs.[7] We need not be surprised to find that the rulers gladly allowed the people to vote them honors. In their first year they were awarded civic crowns by a comitial act, doubtless of the tribes;[8] and in 35 the honors bestowed

[1] Ibid.

[2] Cic. *Phil.* v. 4. 10; p. 457, n. 7. The lex Antonia on the dictatorship was doubtless renewed by a lex Vibia; Cic. l. c.

[3] Dio Cass. xlvi. 55. 3.

[4] Aug. *Mon. Ancyr.* i. 8; App. *B. C.* iv. 7. 27; Herzog, *Röm. Staatsverf.* ii. 84, 89.

[5] Dio Cass. xlvii. 15. 4 (ἐψηφίσαντο ordinarily implies a comitial vote); cf. Lange, *Röm. Alt.* ii. 680. The grant of lictors to the Vestals in 42 may also have been effected by a comitial act; Dio Cass. xlvii. 19. 4. In the same year a consular lex of L. Munatius Plancus ordered the erasure of the names of L. Julius Caesar and Sergius from the list of the proscribed; App. *B. C.* iv. 37. 158; 45. 193.

[6] Dio Cass. xlviii. 9. 5. Lange, *Röm. Alt.* iii. 565, assumes a vote of the comitia.

[7] Dio Cass. xlviii. 33. 5; Gaius ii. 227; *Dig.* 35. 2. Closely related is the lex Glitia of unknown date, mentioned by Gaius only (*Dig.* v. 2. 4), which aimed to prevent a parent from ill-humoredly wronging a child in his testament. Lange, *Röm. Alt.* ii. 662, regards the word Glitia as a copyist's error for Falcidia.

[8] Dio Cass. xlvii. 13. 3.

upon Octavia and Livia probably came through a plebiscite, as did certainly the triumph voted to Octavianus.[1] Last may be mentioned the law of L. Saenius, consul in 30, supported by a senatus consultum, which empowered Octavianus to create new patricians.[2]

Schulze, C. F., *Volksversammlungen der Römer*, 124–39; Peter, C., *Epochen der Verfassungsgeschichte der röm. Republik*, 165 ff.; *Gesch. Roms*, bk. VII. ch. v; bks. VIII–X; Ihne, *Hist. of Rome*, bk. VII. chs. xxi–xxiii; Lange, *Röm. Alt.* iii. 146–597; cf. ii, see index s. the various laws; *Commentationes de legibus Antoniis a Cicerone Phil. v. 4. 10 commemoratis particula prior et posterior*, in *Kl. Schr.* ii. 126–49; *Die lex Pupia*, etc., ibid. ii. 175–94; *Die promulgatio trinum nundinum*, etc., ibid. ii. 214–70; Long, G., *Decline of the Roman Republic*, 5 vols.; Herzog, E., *Gesch. und System der röm. Staatsverf.* i. 509–65; ii. 1–130; Mommsen, *History of Rome*, bk. IV. ch. x; bk. V; *Röm. Staatsr.* and *Röm. Strafr.* see indices s. the various laws, courts, etc.; *Ein zweites Bruchstück des rubrischen Gesetzes vom Jahre* 705 *Roms*, in *Hermes*, xvi (1881). 24–41; *Lex coloniae Iuliae Genetivae Urbanorum*, etc., in *Ephem. Ep.* ii (1875). 105–51; *Lex municipii Tarentini*, ibid. ix. (1903). 1–11; *Ueber die lex Mamilia Roscia Peducaea Alliena Fabia*, in *Röm. Feldmess.* ii. 221–6; Neumann, C., *Gesch. Roms*, i. 602–23; ii. entire; Ferrero, G., *Greatness and Decline of Rome;* Schiller, H., *Geschichte der röm. Kaiserzeit*, I. bk. i; Lengle, *Sullanische Verfassung;* Sunden, J. M., *De tribunicia potestate a L. Sulla imminuta quaestiones;* Freeman, E. A., *Lucius Cornelius Sulla*, in *Hist. Essays*, ii. 271–306; Wilmanns, *Ueber die Gerichtshöfe während des Bestehens der lex Cornelia iudiciaria*, in *Rhein. Mus.* N. F. xix (1864). 528–41; Voigt, M., *Ueber die lex Cornelia sumptuaria*, in *Ber. sächs. Gesellsch. d. Wiss.* xlii (1890). 244–79; Nipperdey, K., *Die leges annales der röm. Republik*, in *Abhdl. sächs. Gesellsch. d. Wiss.* v. (1870). 1–88; Keil, J., *Zur lex Cornelia de viginti quaestoribus*, in *Wiener Studien*, xxiv (1902). 548–51; Ritschl, F., *In leges Viselliam Antoniam Corneliam observationes epigraphicae*, in *Opuscula Philologica*, iv (1878). 427–45; Oman, C., *Seven Roman Statesmen*, v–ix; Strachan-Davidson, *Cicero;* Forsyth, W., *Life of Marcus Tullius Cicero*, 2 vols.; White, H., *Cicero, Clodius, and Milo;* Sternkopf, W., *Ueber die "Verbesserung" des clodianischen Gesetzwurfes de exilio Ciceronis*, in *Philol.* N. F. xiii (1900). 272–304; *Noch einmal die correctio der lex Clodia de exilio*, ibid. xv. 42–70; Gurlitt, *Lex Clodia de exilio Ciceronis*, ibid. xiii. 578–83; Greenidge, A. H. J., *The lex Sempronia and the Banishment of Cicero*, in *Cl. Rev.* vii (1893). 347 f.; Schmidt, O. E., *Der Briefwechsel des M. Tullius Cicero von seinem Prokonsulat in Cicilien bis zu Cäsars Ermordung;* John, C., *Die Entstehungsgeschichte der catilinarischen Verschwörung*, in *Jahrb. f. cl. Philol. Supplb.* viii (1875, 1876). 701–819; Abbott, F. F., *The Constitutional Argu-*

[1] Dio Cass. xlix. 38. 1.

[2] Aug. *Mon. Ancyr.* ii. 1; Tac. *Ann.* xi. 25; Dio Cass. lii. 42. 5; cf. Herzog, *Röm. Staatsverf.* ii. 130.

ment in the Fourth Catilinarian Oration, in *Cl. Journ.* ii (1907). 123–5; Napoleon III, *Jules César*, 2 vols.; Fowler, W., *Julius Caesar;* Nissen, H., *Der Ausbruch des Bürgerkrieges 49 vor Chr.*, in *Hist. Zeitschr.* xliv (1880). 409–45; xlvi (1881). 48–105; Hirschfeld, O., *Der Endtermin der gallischen Staatshalterschaft Caesars*, in *Klio*, iv (1904). 76–87. Wiegandt, L., *Studien zur staatsrechtlichen Stellung des Diktators Cäsar: das Recht über Krieg und Frieden; Caesar und die tribunizische Gewalt;* Hackel, H., *Die Hypothesen über die lex Iulia municipalis*, in *Wiener Studien*, xxiv (1902). 552–62; Cuq, E., *Juges plébeiens de colonie de Narbonne*, in *Mélanges d'archéologie et d'histoire* (1881). 297–311; Kornemann, *Die cäsarische Kolonie Karthago und die Einführung röm. Gemeindeordnung in Africa*, in *Philol.* N. F. xiv (1901). 402–26; Liebenam, W., *Gesch. und Organisation d. röm. Vereinswesens;* Waltzing, J. P., *Corporations professionelles chez les Romains*, i. 78 ff.; Babelon, E., *Monnaies de la république Romaine*, i. 79–88; Dreyfus, R., *Lois agraires*, pt. iii; Toutain, J., *Municipium*, in Daremberg et Saglio, *Dict.* iii. 2022–34; Pauly-Wissowa, Real-Encycl. i. 256 f.: M'. Acilius Glabrio (Klebs); 554–6; M. Aemilius Lepidus (idem); 1800–3: Ambitus (Hartmann); ii. 191–4: Apparitores (Habel); 2482–4: C. Aurelius Cotta (Klebs); 2485–7: L. Aurelius Cotta (idem); iii. 1376 f.: C. Calpurnius Piso (Münzer); iv. 82–8: P. Clodius Pulcher (Fröhlich); 1252–5: C. Cornelius (Münzer); iv. 1287 f.: L. Cornelius Cinna—son of the famous democratic consul (idem); 1380 f.: Cn. Cornelius Lentulus Clodianus (idem); 1522–66: L. Cornelius Sulla Felix (Fröhlich); 2401–4: Deiotarus (Niese).

CHAPTER XVIII

THE COMPOSITION AND PRESERVATION OF STATUTES, COMITIAL PROCEDURE, AND COMITIAL DAYS

I. *The Composition and Preservation of Statutes*

Laws were drawn up in technically exact language. If the proposer of a rogation lacked the necessary knowledge, he sought the advice of learned friends.[1] The bill, as first presented to the senate and published in the city on wooden tablets,[2] was merely tentative; for discussion in the senate or the expression of public opinion might suggest changes[3] or even induce the author to withdraw the proposal.[4]

At the head of the law after its adoption was inserted the index and praescriptio,[5] of which the consular lex Quinctia de aquaeductibus, accepted by the tribes in the year 9 B.C., offers a good example:[6]

"T. Quinctius Crispinus consul populum iure rogavit, populusque iure scivit in foro pro rostris aedis divi Iulii pr(idie) *K* Iulias. Tribus Sergia principium fuit, pro tribu Sex. . . . L. f. Virro *primus scivit.*"[7]

[1] Plut. *Ti. Gracch.* 9; Cic. *Att.* iii. 23. 4; Lange, *Röm. Alt.* ii. 649; Karlowa, *Röm. Rechtsgesch.* i. 427.

[2] Cic. *Leg. Agr.* ii. 5. 13; Dion. Hal. x. 57. 5; Livy iii. 34. 1; Dio Cass. xlii. 32. 2 f. A bronze tablet was sometimes used for a mere rogation; Cic. *Mil.* 32. 87; Suet. *Caes.* 28. For leges promulgatae, see Livy iii. 9. 5; iv. 1. 1; 48. 1, 9; vi. 35. 4; 39. 1; x. 6. 6; xliii. 16. 6. On the requirement of the trinum nundinum, see p. 397. The proposer was called rogator or lator (Livy iv. 48. 10); his supporters adscriptores; Cic. *Leg. Agr.* ii. 9. 22. The names of the latter, provided they were magistrates, were often published with the bill for the sake of influence; Cic. *Pis.* 15. 35; *Red. in Sen.* 2. 4; 9. 22; *Sest.* 33. 72; *Fam.* i. 9. 16.

[3] Cic. *Att.* i. 19. 4; *Inv.* ii. 45. 130 f.; Ascon. 57; Livy iii. 34. 4 ff.

[4] Cic. *Sull.* 22. 62.

[5] Cic. *Leg. Agr.* ii. 9. 22.

[6] Frontinus, *De aquis urbis Romae*, ch. 129; Bruns, *Font. Iur.* 115; Girard, *Textes*, 103–5; cf. *Lex Agr.* 1 (*CIL.* i. 200).

[7] The Italics supply lacunae. See also Cic. *Phil.* i. 10. 26; Probus, in *Gramm. Lat.* iv. 272 (Keil).

It contains the name of the rogator,[1] his office, the body of citizens, whether populus or plebs, to which the proposal is offered, the place of the assembly,[2] the date, the century (praerogativa) or the tribe or curia (principium) which voted first, and the name of the citizen who has been granted the honor of casting the first vote for his praerogativa or principium.[3] If the senate has given its sanction, that fact is indicated by the insertion of the phrase "de s(enatus) s(ententia)."[4] In case the proposal is by a tribune of the plebs, it is strictly a plebi scitum; but that its equivalence to a lex may be made clear, it is described as a lex plebeive scitum.[5]

The body of the law is divided into chapters separated by spaces, sometimes numbered, and occasionally bearing individual titles.[6] Last comes the sanction,[7] which provides for the enforcement. Some laws, however, — termed leges imperfectae — lack this part.[8] Usually the sanction prescribes the form of procedure according to which offenders are to be tried.[9]

[1] Or the several names of a group of rogatores (cf. Livy iv. 1. 2; Cic. *Sest.* 33. 7. 2), as in the *Lex de Termessibus* (p. 425) and the lex Mamilia Roscia, etc. (p. 441, n. 1); see also Mommsen, *Röm. Staatsr.* iii. 315, n. 2.

[2] Cf. Probus, in *Gramm. Lat.* iv. 272.

[3] He was either taken by lot or appointed by the presiding magistrate; Cic. *Planc.* 14. 35.

[4] As in the *Lex de Termess.* 1.

[5] Ex h(ace) l(ege) plebive scito; *Lex Lat. Bant.* (3). 15; Bruns, *Font. Iur.* 55; Girard, *Textes*, 31; *Lex Agr.* 2 (*CIL.* i. 200).

[6] Sometimes K. (kaput) or K. L. (kaput legis) followed by a number is used, or the title may be preceded by R. (rubrica); Egbert, *Lat. Inscr.* 349; Cagnat, *Épigr. Lat.* 266.

[7] *Dig.* xlviii. 19. 41; Cic. *Att.* iii. 23. 2 f. The substance of the sanctio comprising the extant fragment of the *Lex Lat. Bant.* is given on p. 379. On the lex sacrata, see p. 264 f.

[8] Macrob. *Somn. Scip.* ii. 17. 13. A lex minusquam perfecta prescribes a penalty but allows the violating act to stand. The lex Furia testamentaria (p. 352), for instance, declares that the beneficiary of a legacy above the legal limit must pay fourfold, but does not rescind the legacy itself; Ulp. *Reg.* 1. A lex perfecta not only prescribes a penalty but nullifies a contravening act. These distinctions apply only to the civil law. Cf. Ulp. l. c.; Karlowa, *Röm. Rechtsgesch.* i. 428; Poste, *Gaius*, 566. Other terms connected with the enactment, repeal, and alteration of laws are explained by Ulp. *Reg.* 3: "Lex est rogatur, id est fertur, aut abrogatur, id est prior lex tollitur, aut derogatur, id est pars primae legis tollitur, aut subrogatur, id est adiicitur aliquid primae legi, aut obrogatur, id est mutatur aliquid ex prima lege." The classification of laws as curiate, centuriate, and tribal according to the form of the comitia, and as consular, tribunician, etc. according to the office of the lator does not need explanation.

[9] *Dig.* xiii. 2. 1; Gromat. 265.

If the author of the new proposal has no desire to disturb any existing law, this fact is indicated by the insertion of the formula E(x) H(ac) L(ege) N(ihilum) R(ogatur).[1] As a protection from the operation of earlier laws left in whole or in part unrepealed by the new statute, the latter is provided with a declaration that no attempt is hereby made to legalize anything illegal.[2] By an analogous statement unconscious trespassing upon the rights of religion is rendered harmless.[3] In accordance with a law of the Twelve Tables[4] provision is further made against the consequences of conflict with other laws by the declaration that if any one in carrying out this law shall trespass against other statutes or senatus consulta, his act shall render him in no way liable to such earlier laws or decrees.[5] A provision may also be added against illegal alteration or repeal.[6] Sometimes the proposer includes an article for compelling senators and magistrates to uphold his law, should it be enacted,[7] or for otherwise overcoming opposition to its enforcement,[8] or for making repeal difficult.[9] It becomes binding from the moment when the author announces its adoption by the comitia, excepting in case time has to be given the senators and magistrates for swearing to it.[10]

[1] Cf. *Frag. Atest.* in Bruns, *Font. Iur.* 101; Girard, *Textes*, 78; *Lex Acil. rep.* 78 (*CIL.* i. 198).

[2] "Si quid ius non est rogarier, eius ea lege nihilum rogatur"; Cic. *Caec.* 33. 95; *Dom.* 40. 106; *Lex Tudert.* (*CIL.* i. 1409) 10 f. A far more detailed formula is given by Cic. *Att.* iii. 23. 3.

[3] "Si quid sacri sancti est, quod non iure sit rogatum, eius hac lege nihil rogatur"; Probus, in *Gramm. Lat.* iv. 273.

[4] P. 233 f.

[5] *Lex de imp. Vesp.* in *CIL.* vi. 930; Bruns, *Font. Iur.* 193 f.; Girard, *Textes*, 106: "Si quis huiusce legis ergo adversus leges rogationes plebisve scita senatusve consulta fecit fecerit, sive, quod eum ex lege rogatione plebisve scito senatusve consulto facere oportebit, non fecerit huius legis ergo, id ei ne fraudi esto, neve quit ob eam rem populo dare debeto, neve cui de ea re actio neve iudicatio esto, neve quis de ea re apud se agi sinito." Although this document may have been a senatus consultum, it has the form of a law and is so called by itself; cf. Mommsen, *Röm. Staatsr.* ii. 876–9. All such formulae were indicated by the series of initial letters of the component words; Probus, in *Gramm. Lat.* iv. 272 f.

[6] Fest. 314. 29: "Neve per saturam abrogato aut derogato"; *Lex Tudert.* 9; Cic. *Att.* iii. 23. 3.

[7] This is true of the Lex Lat. Bant. (p. 380), the Appuleian laws (p. 395), and the Julian agrarian law of 59 (p. 440).

[8] As by forbidding tribunician intercession; *Lex Mal.* 58; Cic. *Leg. Agr.* ii. 12. 30.

[9] Cic. *Att.* iii. 23. 2.

[10] Lange, *Röm. Alt.* ii. 652.

The law is then engraved on a bronze tablet,[1] the original copy of which is kept by the quaestors in the aerarium.[2] Other copies are posted in public places where all can read it.[3]

II. *Comitial Procedure*

The tribal assembly convened under the presidency of a tribune or aedile of the plebs,[4] in which case the gathering was technically the plebs;[5] or as the populus under a patrician magistrate — dictator, consul, praetor,[6] curule aedile,[7] pontifex maximus,[8] or any extraordinary magistrate who possessed the ius agendi cum populo.[9] It met indifferently within or without the pomerium, usually on the Capitoline hill in the precinct of the temple of Jupiter,[10] in the Forum and comitium,[11] the Campus Martius,[12] and within the latter in the Flaminian meadow or Flaminian Circus.[13] Meetings called by tribunes had to convene within the first milestone, which bounded the authority of these officials,[14] whereas we hear of a tribal assembly called by a consul in the military camp at Sutrium (357).[15] The contio, described in an earlier chapter, was transformed into comitia by order of the presiding magistrate directing the people to take

[1] Livy iii. 57. 10; Cic. *Phil.* i. 10. 26; Tac. *Hist.* iv. 40; Suet. *Vesp.* 8; Serv. *in Aen.* vi. 622. In earlier time wooden tables were used for laws as well as for rogations; Dion. Hal. iii. 36. 4; iv. 43. 1.

[2] P. 438. Plebis cita and the senatus consulta pertaining thereto were originally kept by the aediles of the plebs in the temple of Ceres; p. 278 f.

[3] "Unde de plano recte legi possit"; Probus, in *Gramm. Lat.* iv. 273, for example, the Forum; Dion. Hal. x. 57. 7. Plebiscites and senatus consulta of international importance could be found in the temple of Faith on the Capitoline hill; Suet. *Vesp.* 8; Obseq. 68. For other places, see Lange, *Röm. Alt.* ii. 652 f.

[4] Under the aedile for judicial business only; p. 325.

[5] P. 276.

[6] Cf. p. 304.

[7] For judicial business only; p. 292.

[8] P. 327.

[9] P. 141. For instance, the dictator; p. 416, n. 1.

[10] Livy xxv. 3. 14; xxxiii. 25. 7; xxxiv. 1. 4; 53. 2; xliii. 16. 9; xlv. 36. 1; App. *B. C.* i. 15. 64; Plut. *Ti. Gracch.* 17; *C. Gracch.* 13; *Aemil.* 31; Ascon. 77.

[11] Dion. Hal. vii. 17. 2; ix. 41. 4; x. 9. 3; Livy viii. 14. 12; Varro, *R. R.* i. 2. 9. For legislation in the Forum, see *Lex Quinct. de Aq.* praescriptio.

[12] Varro, *R. R.* iii. 2. 5; Cic. *Planc.* 9. 16; *Att.* i. 1. 1; iv. 3. 4; *Fam.* vii. 30. 1.

[13] Livy iii. 54. 15; xxvii. 21. 1; cf. Richter, *Top. v. Rom*, 48, 212; Platner, *Top. and Mon. of Anc. Rome*, 343.

[14] Livy iii. 20. 7.

[15] P. 297. Meetings distant from the city were soon afterward forbidden by law.

their places in their respective tribes.[1] Before this command was given a tribe was drawn by lot to receive the Latins who were at Rome.[2] A second tribe was then drawn as a principium to cast the first vote.[3] The bringing of the urn[4] and the sortition were the last acts of the contio. To facilitate the division ropes were stretched across the Forum or other assembly-place, forming as many compartments as there were tribes.[5] In time a permanent enclosure, termed Saepta,[6] was built for the comitia.[7] If the magistrate found that an entire tribe was absent, he assigned to it for the occasion a few citizens from some other, in order that in theory all thirty-five tribes — the universus populus Romanus — might be present.[8] After the tribes were assembled in their comitia as here described, the principium was called to vote. This point terminated the right of

[1] Vocare tribus in (or ad) suffragium (Cic. *Planc.* 20. 49; Livy iii. 71. 3; iv. 5. 2; vi. 38. 3; x. 9. 1; xxv. 3. 15), citare tribus ad suffragium ineundum (Livy vi. 35. 7), or mittere tribus in suffragium (Livy iii. 64. 5).

[2] Livy xxv. 3. 16; *Lex Mal.* 53; Fest. 127. 1. These sources prove, against Lange, *Röm. Alt.* ii. 483, that the right to vote in a tribe drawn thus by lot was not restricted to those who were virtually citizens awaiting enrolment. It is probable that, at least in early time, not even residence was a requirement; cf. Mommsen, *Röm. Staatsr.* iii. 232, n. 2, 396 f., 643 f.

[3] In the opinion of Mommsen, *Röm. Staatsr.* iii. 397, n. 4, 411, n. 7; *Abhdl. sächs. Gesellsch. d. Wiss.* ii (1857). 426, n. 107, the principium had nothing to do with the order of voting. His argument is based chiefly on the fact that according to the *Lex Mal.* 55 — a constitution evidently based in large part on that of Rome — the curiae voted simultaneously. Reference to the preliminary vote of a single Roman tribe, however, is made by Plut. *Aemil.* 31; App. *B. C.* i. 12. 52. Furthermore it is difficult to understand why so great importance should attach to the principium on Mommsen's supposition that it had merely to do with the order of announcement after the simultaneous vote of all the tribes. His view is accepted by Liebenam, in Pauly-Wissowa, *Real-Encycl.* iv. 684, but rejected by Lange, *Kl. Schr.* ii. 477 f.; Herzog, *Röm. Staatsverf.* 1184, and ignored by most other writers, including Liebenam, inconsistently; ibid. 706.

[4] "Sitellam deferre." It was filled with water, the lots were thrown in, and the drawing was effected by pouring out the water, which caused the pieces to fall one by one. The process was supervised by the custodes; cf. Ascon. 70; Cic. *Leg. Agr.* ii. 9. 22.

[5] Dion. Hal. vii. 59. 1; App. *B. C.* iii. 30. 117.

[6] Serv. *in Bucol.* i. 33; Ovid, *Fast.* i. 53; Cic. *Mil.* 15. 41.

[7] The marble building, known as the Saepta Julia, begun in 54 by Julius Caesar (Cic. *Att.* iv. 16. 14), was finished by Agrippa in 27 B.C. A plan is given by Platner, *Top. and Mon. of Anc. Rome*, 365, who describes it at length; cf. Richter, *Top. v. Rom*, 230 ff.

[8] Cic. *Sest.* 51. 109; p. 129 above.

intercession[1] and of obnuntiating an evil omen discovered in watching the sky.[2] When the suffrage of the principium was given and announced,[3] all the remaining tribes voted simultaneously.[4] In earlier time a rogator stood at the exit of each saeptum, and received the oral votes of the citizens as they passed out one by one.[5] After the introduction of the ballot,[6] the state provided little tablets inscribed with abbreviations for "ut rogas" and "antiquo" for affirmative and negative votes respectively,[7] and for elections blank tablets on which the names of the candidates could be written.[8] They were deposited in boxes (cistae) placed at the exits above mentioned,[9] under the charge of rogatores, who, having lost their original function, were now often, and more aptly, called custodes.[10] They counted (diribitio) the ballots, and reported (renuntiatio) the results to the president.[11] The latter had a right to announce to the public the returns from the tribes in whatever order he pleased, but he usually preferred to determine the succession by lot.[12]

[1] The act could take place during the deliberation, the placing of the urn, the sortition, and the separation of the people in their voting groups; Ascon. 70; (Cic.) *Herenn.* i. 12. 21; Cic. *N. D.* i. 38. 106. It was most convenient, however, for the tribune to interpose his veto by forbidding the reading of the bill; Ascon. 57 f. (p. 430 above); App. *B. C.* i. 12.

[2] P. 115.

[3] Livy ix. 46. 2; Gell. vii (vi). 9. 2.

[4] Dion. Hal. vii. 59. 9; 64. 6.

[5] This is true of the comitia centuriata (Cic. *Div.* ii. 35. 75; *N. D.* ii. 4. 10), and doubtless applies as well to other forms of assembly; Mommsen, *Röm. Staatsr.* iii. 403, n. 4. The rogator must have kept a tally of the votes in rogations in some such way as in elections, in which for each vote he placed a mark (punctum) after the name of the candidate in whose favor it was given; Mommsen, ibid. 404.

[6] P. 359, 390.

[7] U. R. and presumably A.; Cic. *Att.* i. 14. 5; Mommsen, *Röm. Staatsr.* iii. 402, n. 2. There were corresponding abbreviations for trials; Liebenam, in Pauly-Wissowa, *Real-Encycl.* iv. 692; cf. p. 178 f. above.

[8] Plut. *Cat. Min.* 46; Suet. *Caes.* 80. These names might also be abbreviated; Cic. *Dom.* 43. 112.

[9] Sisenna, Frag. 118 (Peter, *Reliq.* i. 293); (Cic.) *Herenn.* i. 12. 21; Plut. *Ti. Gracch.* 11. The voting within the curiae was also by heads; Livy i. 43. 10; Dion. Hal. iv. 20. 2.

[10] Cic. *Red. in Sen.* 11. 28; *Pis.* 15. 36; *Lex Mal.* 55 (Bruns, *Font. Iur.* 149; Girard, *Textes*, 112). As they also counted the votes, they were termed diribitores. In the last century of the republic they were drawn from the album iudicum (Pliny, *N. H.* xxxiii. 2. 31), and hence included some of the most influential men in the state; cf. Cic. *Leg.* iii. 3. 10; 15. 33 f.

[11] Cic. *Planc.* 20. 49; *Pis.* 5. 11; 15. 36; Varro, *R. R.* iii. 5. 18.

[12] Cic. *Planc.* 14. 35. The order of announcement of the curial votes was like-

In the election of any college of magistrates each citizen voted for as many candidates as there were places to be filled, and the announcements for each continued till a majority was reached in his favor. Precedence in honor within the college depended upon priority of election.[1] The declaration of the vote by the praeco at the command of the president closed the comitial act.[2] If for any reason the presiding magistrate discontinued the announcement before a majority was reached, the vote was without effect.[3] The session of any assembly had to begin and end between sunrise and sunset.[4]

The comitia curiata, presided over by the king, the interrex, and possibly by the tribunus celerum,[5] and in the republican period by the dictator,[6] consul,[7] interrex,[8] praetor,[9] pontifex maximus,[10] or rex sacrorum,[11] met always within the pomerium,[12] usually in the comitium,[13] or for religious purposes in front of the Curia Calabra on the Capitoline hill.[14] It was called together by a curiate lictor[15] at the sound of the lituus or tuba.[16] The procedure, which in general was like that of the tribal assembly, and which has been touched upon in the chapters on

wise determined by lot; *Lex Mal.* 57. Livy, ix. 38. 15, refers to the sortition for the principium.

[1] Varro, in Gell. x. 1. 6; Cic. *Pis.* 1. 2; *Mur.* 17. 35; Plut. *C. Gracch.* 3; *Caes.* 5; Suet. *Vesp.* 2. In the case of censors alone no declaration was made unless two were elected; Livy ix. 34. 25.

[2] *Lex Mal.* 57; Cic. *Mur.* 1. 1; Gell. xii. 8. 6. In like manner in the comitia curiata a majority of the curiae decided; Dion. Hal. ii. 14. 3.

[3] As in the vote to depose Trebellius from the tribunate in 67 (p. 432); cf. the deposition of Octavius in 133; p. 367. The voting as well as the announcement might be interrupted by an evil omen (p. 109, 111, 248), in which case the assembly had to be adjourned. Sometimes the president arbitrarily adjourned the meeting; Livy xlv. 36. 1–6, 10; Plut. *Aemil.* 31.

[4] *Twelve Tables* i. 9: "Solis occasus suprema tempestas esto"; Documents in Varro, *L. L.* vi. 87, 92; *Declam. in Cat.* 19; cf. Livy x. 22. 7 f.

[5] For the presidency of the tribunus celerum, see Livy i. 59. 7; cf. Humbert, in Daremberg et Saglio, *Dict.* i. 1377. It is denied by Liebenam, in Pauly-Wissowa, *Real-Encycl.* iv. 682.

[6] Livy ix. 38. 15; p. 112 above.

[7] P. 195 f.

[8] Cic. *Rep.* ii. 13. 25; 17. 31.

[9] Cic. *Leg. Agr.* ii. 11. 28.

[10] P. 155.

[11] P. 154.

[12] Livy v. 52. 15; Dio Cass. xli. 43.

[13] Varro, *L. L.* v. 155; Livy, ibid.; cf. Fest. ep. 38.

[14] P. 154.

[15] Gell. xv. 27. 2.

[16] Dion. Hal. ii. 8. 4; p. 31 above; cf. Mommsen, *Röm. Staatsr.* iii. 386.

the comitia calata and curiata, does not require further consideration here.[1]

The comitia centuriata could be summoned for voting by no magistrates in their own name and under their own auspices excepting those who were vested with the imperium[2] — the dictator, consul, interrex for holding elections, the praetor for judicial business,[3] and all extraordinary magistrates with consular power. The duoviri perduellioni iudicandae, the quaestors, and the tribunes of the plebs could summon this assembly for judicial business under the auspices only of a magistrate cum imperio, as the consul or more especially the praetor.[4] It always met outside the pomerium, usually in the Campus Martius,[5] at the call of an accensus, who sounded the trumpet (classicum) at daybreak along the city wall.[6] During the session the citizens in the assembly could see a flag waving above the Janiculum to signify that this post was occupied by a garrison as a protection for the city while they were engaged outside in a public duty.[7] As in the case of the tribal assembly, the contio was transformed into comitia by an order of the president commanding the citizens to separate into their respective voting groups.[8] The place of meeting, termed ovile[9] (sheepfold), was divided by ropes or wooden fences into as many compartments as there were centuries in the largest voting division — probably eighty-seven.[10] An elevated passage (pons) formed the exit of each compartment.[11] The members of a century, while passing out one by one, gave their votes to the rogator, in the same way as the tribesmen in the comitia tributa. After the ballot was introduced, it was used in all assemblies alike.[12] The order of voting before and after the reform has been sufficiently explained in

[1] On the procedure, see Liebenam, in Pauly-Wissowa, *Real-Encycl.* iv. 682–4.

[2] P. 103, 140, 203, 244, 245. The censors convoked it for the census and the lustrum only; p. 204.

[3] He could not hold these comitia for elections; Livy xxii. 33. 9.

[4] See references in the next to the last note above.

[5] Livy v. 52. 15; Gell. xv. 27. 5; Cic. *Rab. Perd.* 4. 11.

[6] Varro, *L. L.* vi. 88, 91; cf. Verg. *Georg.* ii. 539.

[7] P. 203, n. 2.

[8] P. 150.

[9] Livy xxvi. 22. 11; Juv. vi. 529; Serv. *in Bucol.* i. 33.

[10] 70 of the first class — 1 prerogative + 18 equestrian.

[11] Cic. *Att.* i. 14. 5; (Cic.) *Herenn.* i. 21; Fest. 334. 16.

[12] P. 359, 390, 467.

an earlier chapter.[1] In general the principles governing the announcement of votes, interruptions, and adjournments were the same for all three assemblies. The length of the assemblies must have varied according to the form of organization, the number of voters present, and various other circumstances. In the time of Caesar the process in the comitia centuriata, on an occasion in which there was no delay, lasted five hours.[2] We should therefore assume at least an hour for the voting of the tribes.[3]

III. *Comitial Days*

The people could meet for voting on comitial days only[4]— marked C in the calendar.[5] They excluded the dies nefasti — marked N, NP, or NF — on which religion forbade that public business should be done.[6] They excluded further the two days marked Q(uando) R(ex) C(omitiavit) F(as),[7] the one day marked Q(uando) ST(ercus) D(eletum) F(as)[8] — because on these days it was impossible to open the assembly in the morning as usage prescribed — and the eight days marked EN,[9] the morning and evening of which were alone nefasti, the intervening part being

[1] P. 211, 226 f. [2] Cic. *Fam.* vii. 30.

[3] In the comitia centuriata in addition to the prerogative there had to be at least four, and possibly seven, successive votings before a majority could be reached. In the tribal assembly there was but one in addition to the principium. After the comitia curiata had come to be represented by thirty lictors the votes could be taken in a few minutes.

[4] Varro, *L. L.* vi. 29: "Comitiales dicti quod tum ut coiret populus constitutum est ad suffragium ferendum nisi si quae feriae conceptae essent, propter quas non liceret, (ut) Compitalia et Latinae"; Macrob. *Sat.* i. 16. 14: "Comitiales sunt, quibus cum populo agi licet, et fastis quidem lege agi potest, cum populo non potest, comitialibus utrumque potest"; Verrius Flaccus, in *Fast. Praen.* ad Ian. 3 (*CIL.* i². p. 231); Ovid, *Fast.* i. 53; Fest. ep. 38.

[5] For the various local Italian calendars with Mommsen's comment, see *CIL.* i². p. 203 ff. Especially useful is the Diei notarum laterculus, ibid. p. 290 ff.

[6] On the distinction between dies fasti and dies nefasti, see Varro, *L. L.* vi. 29 f., 53; Macrob. *Sat.* i. 16. 14; *Fast. Praen.* ad Ian. 2; Ovid, *Fast.* i. 47; Fest. ep. 93; Gaius iv. 29.

[7] March 24 and May 24; p. 159, n. 8.

[8] June 15. For the meaning of this expression and the one given just above, see Varro, *L. L.* vi. 31 f.; Ovid, *Fast.* v. 727; vi. 225; Mommsen, in *CIL.* i². p. 289. These three days were called fissi; Serv. *in Aen.* vi. 37.

[9] Dies endotorcisi or intercisi; Varro, *L. L.* vi. 31; Macrob. *Sat.* i. 16. 3; Ovid, *Fast.* i. 49; Mommsen, in *CIL.* i². p. 290.

free for business. Equally distinct from the comitial days were the dies fasti non comitiales, marked F, and in this volume termed simply fasti.[1] They were reserved for judicial business. The pre-Julian year contained a hundred and eight nefasti[2] and forty-five fasti, leaving a hundred and ninety-one comitial days.[3] The ten days added by Caesar are all marked F.[4] It is to be noticed, however, that those days marked C on which fell in any year extraordinary or changeable festivals were thereby rendered unfit for comitia.[5]

It seems probable that in early time market-days (nundinae) were not wholly devoted to trade[6] and to the settlement of cases at law,[7] but that they could be used equally well for voting assemblies,[8] till the Hortensian statute of 287 declared those

[1] Cf. Varro, *L. L.* vi. 30; Macrob. *Sat.* i. 16. 14. In a wider sense comitial days were fasti. Naturally judicial business could be transacted on those comitial days on which the assembly did not actually meet, or after its adjournment if time remained; p. 315. A Clodian law of 58 permitted comitial legislation on all dies fasti; p. 445.

[2] Mommsen, in *CIL.* i². p. 296; 109 according to Wissowa, *Relig. u. Kult. d. Röm.* 368 f.

[3] Mommsen, ibid. Wissowa, ibid., reckons 192 comitial days, which would give 43 non-comitial fasti. The following were the dies comitiales according to Mommsen:

Jan. 3, 4, 7, 8, 12, 16–28, 31 — in all xix.
Feb. 18–20, 22, 25, 28 — vi.
Mar. 3–6, 9–12, 18, 20, 21, 25, 26, 28–31 — xvii.
Apr. 3, 4, 24, 27–30 — vii.
May, 3–6, 10, 12, 14, 17–20, 25–31 — xviii.
June, 4, 16–28, 30 — xvi.
July, 10–14, 17, 18, 20, 22, 26–31 — xv.
Aug. 3, 4, 7, 8, 10–12, 15, 16, 18, 20, 24, 26, 28, 31 — xv.
Sept. 4, 7–11, 16–22, 24–28, 30 — xix.
Oct. 3–6, 9, 10, 12, 17, 18, 20–31 — xxi.
Nov. 3, 4, 7–12, 15–28, 30 — xxiii.
Dec. 4, 7–10, 16, 18, 20, 22, 24–28, 31 — xv.

[4] Wissowa, ibid. 378.

[5] Varro, in Macrob, *Sat.* i. 16. 19; *L. L.* vi. 29.

[6] Varro, *R. R.* ii. praef. 1; Serv. *in Georg.* i. 275.

[7] That judicial business was done on those nundinae which were not marked N(efasti) is clearly proved by the Twelve Tables, iii. 1–6 (Girard, *Textes*, p. 13), in Gell. xx. i. 45 ff.; cf. especially § 47: "Trinis nundinis continuis ad praetorem in comitium producebantur, quantaeque pecuniae iudicati essent, praedicabatur."

[8] Dion. Hal. vii. 59. 3: *Ἐν δὲ ταύταις (ἀγοραῖς) συνιόντες ἐκ τῶν ἀγρῶν εἰς τὴν πόλιν οἱ δημοτικοὶ τὰς τ' ἀμείψεις ἐποιοῦντο τῶν ὠνίων καὶ τὰς δίκας παρ' ἀλλήλων ἐλάμβανον, τά τε κοινά, ὅσων ἦσαν κύριοι κατὰ τοὺς νόμους καὶ ὅσα ἡ βουλὴ ἐπιτρέψειεν*

marked F and C to be fasti, reserving them thus for judicial business and prohibiting from them voting assemblies of every kind.[1] The general tendency during the republic was to restrict the power of the people by lessening the number of days on which they could meet for passing resolutions.[2]

Lange, *Römische Altertümer*, ii. 649–54; Madvig, *Verfass. und Verw. d. röm. Staates*, i. 246–73; Herzog, *Röm. Staatsverf.* i. 1105–13; Karlowa, *Röm. Rechtsgesch.* i. 388–448; Mommsen, *Röm. Staatsr.* iii. 314 f., 396–419; in *CIL.* i. p. 203 ff., 290 ff.; Liebenam, in Pauly-Wissowa, *Real-Encycl.* iv. 482–4, 687–93, 705–8; Humbert, in Daremberg et Saglio, *Dict.* i. 1377, 1379 f.; Cuq, ibid. iii. 1122 ff.; Hübner, A., *De senatus populique Romani actis*; Ritschl, F., *In leges Viselliam Antoniam Corneliam observationes epigraphicae*, in *Opuscula Philol.* iv. 427–45; Egbert, *Latin Inscriptions*, 348–50; Cagnat, *Épigraphie Lat.* 265–7; Marquardt, *Röm. Staatsv.* iii. 289 ff.; Wissowa, *Religion und Kultus der Römer*, 368 ff.; *Comitiales dies*, in Pauly-Wissowa, *Real-Encycl.* iv. 716; Fowler, *Roman Festivals*, 8 ff.

αὐτοῖς, ψῆφον ἀναλαμβάνοντες ἐπεκύρουν; Rutilius, in Macrob. *Sat.* i. 16. 34: "Romanos instituisse nundinas, ut octo quidem diebus in agris rustici opus facerent, nono autem die intermisso rure ad mercatum legesque accipiendas Romam venirent." The words of Dionysius and Rutilius apply to all voting assemblies, not simply to those of the plebs.

[1] Gran. Licinian. in Macrob. *Sat.* i. 16. 30 (quoted p. 315, n. 2).

[2] Cf. Lange, *Röm. Alt.* ii. 518 f.

CHAPTER XIX

A SUMMARY OF COMITIAL HISTORY

ORIGINATING in the simple gathering (contio) of the primitive folk, the general assembly of Roman citizens came, under sacerdotal influence, to be grouped in curiae with a view to adding order and solemnity to the meetings. Thus the Romans created the comitia curiata. Not only the curiae, but also the later centuries, classes, and tribes, originally existed independently of the assembly for various administrative purposes and were brought into connection with that institution as convenient systems of organization. At first ceremonial, the comitia curiata came to be used for voting on resolutions. Gradually reducing this earliest organized gathering to a formality, the Romans successively introduced the centuriate and the tribal comitia. Excepting for brief, transitional periods the assembly, whatever its form, admitted all citizens who possessed the right of suffrage. Its power was at first slight vague, and chiefly receptive. Though in the regal period the people occasionally approved or rejected judicial sentences, administrative plans, and even proposals for changes in existing customs submitted to them by the king of his own free will, the only function which at that time they definitely acquired was the election of their chief magistrate.

From the founding of the republic to the decemviral legislation (509–450) the magistrates and senate exercised almost absolute control over the administration. At the very beginning the comitia centuriata — a newly established timocratic institution — assumed the right to enact laws, which for a long time were substantially limited to matters directly affecting the constitution; and the alleged Valerian centuriate statute made of this body a supreme court to which any citizen condemned on a capital charge was granted the privilege of appeal. In practice, however, the law benefited those only of high rank who were

accused of political crimes. Meantime a new, more democratic assembly under the presidency of tribunes of the plebs, meeting by tribes after 471, usurped an extensive though ill-defined power of fining and capitally condemning offenders against the sanctity of plebeian officials. But this function, resting upon an act of the plebs only and enforced by threats of violence, was almost nullified by patrician opposition. It was doubtless in this period that voting by heads arose in the comitia centuriata, whence it was adopted by the other assemblies.

The Twelve Tables (451–450) confirmed the comitia centuriata in the rights it had previously assumed; and if not expressly, at least by implication they granted legislative and judicial power to the tribunician assembly of tribes. A Valerian-Horatian statute of 449 provided that resolutions approved by the senate and carried by the latter assembly should have the force of law, just as from the beginning the senatorial sanction (patrum auctoritas) was essential to the validity of curiate and centuriate resolutions and elections. At the same time in conformity with a law of the Twelve Tables an arrangement was made by which the tribunes should bring their finable actions before the tribes and those of a capital nature before the centuries. Soon afterward the patrician magistrates began to use the tribes for the election of inferior officials and occasionally for the ratification of laws.

During the century following the decemviral legislation (450–358) the almost absolute administrative power of the senate and magistrates remained but slightly affected by the comitia. The appointment of a dictator or the establishment of a special judicial commission placed the citizens at the mercy of the government. Although the comitia centuriata acquired the right to ratify or reject declarations of offensive war (427) and though the tribunes succeeded in enacting a few important plebiscites, like the Canuleian and the Licinian-Sextian, the people made little progress toward the free exercise of legislative and judicial functions. With the enactment of a lex de ambitu in 358 the tribes began to legislate concerning magistrates, with reference not only to candidacy and qualifications but soon also to powers and functions and to the creation of new offices. They passed laws on finance and religion and on the qualification and ap-

pointment of senators; they assumed the function of ratifying or rejecting proposals for peace (321) and of admitting aliens to citizenship. The tribes and the centuries began regularly to exercise appellate jurisdiction. About the same time the people acquired the function of appointing special judicial commissions, and subjected the dictator to the law of appeal. In an effort to throw off the control exercised by the nobility the Publilian statute of 339 excluded patricians from the tribunician assembly of tribes (a regulation afterward silently abandoned), and in 287 that of Hortensius rendered the approval of the senate and of the patrician portion of it unessential to the validity of the plebiscite. Meanwhile in administrative and in constitutional legislation the comitia tributa made great gains at the expense of the senate and magistrates and of the centuriate assembly.

The period extending from 358 to 287 was accordingly the first great age of comitial legislative and judicial activity. The strong popular tendency then manifested might have created a real democracy, had it not been for (1) the cleverness of the nobles in gaining control of the plebeian tribunate and in using religion as a check on comitial freedom, (2) the rapid expansion of the Roman power, which drew the public mind away from internal politics, and which rendered the assembly not only an inadequate representative of the citizens but also incompetent for the functions devolving upon it. Many years passed, however, before this incompetency became serious. Though henceforth the comitia were in theory sovereign, they remained limited by a want of initiative both in the act of assembling and in the offering of resolutions, by the lack of free deliberation, by the tribunician veto, and by the oblative auspices. After the enactment of the Hortensian statute the comitia tributa enjoyed almost exclusive possession of the legislative function. The larger share fell to the tribunician assembly, which excelled in aggressiveness, and which admitted as much freedom of debate as was consistent with the spirit of the constitution — hence it was preferably termed concilium. Notwithstanding these relative advantages of the tribal assembly the adverse conditions above mentioned led to an era of comitial stagnation (287–232), at the close of which the tribunate of C. Flaminius brought a new outburst of activity (232–201). The assemblies now recovered all

they had lost in the preceding age and made fresh gains. Noteworthy are the sumptuary, monetary, private, and family statutes, and the recognition of the right of the people to grant dispensations from existing laws. In the opinion of Polybius the constitution was in this time at its best. The nobles admitted the theory of popular sovereignty, as they could well afford to do in view of their thorough control of all governmental institutions. In the era of the completed plutocracy (201–134) they regularly resorted to the comitia in matters of little political importance or in those in which they felt certain of the results. Under these conditions fewer laws were enacted for the benefit of the masses. The policy of the nobles was to repress individual freedom by subjecting both magistrates and assemblies to the plutocratic machine. Even the comitial judicia were subordinated to this end; and toward the close of the period the people in establishing permanent courts began through legislation to surrender their judicial power to the senatorial class, while the senate, on the other hand, resumed the function of dispensing from the laws and of appointing special courts. In these ways the nobility was making great inroads on popular liberty.

In the beginning of the revolutionary period (134–30) the tribal assembly, liberated for a time from servitude to the plutocracy, became under the presidency of reforming tribunes the ruling power at Rome. Its activity not only embraced the whole field of administration but was directed by the Gracchi to the creation of a new political constitution and to the regeneration of society. But its variable composition precluded consistency of action. Though at times, as when controlled by the rural element of the citizen body, it could be induced to adopt liberal, statesmanlike measures such as the agrarian and colonial laws of the Gracchi, the usual dominance of the ignorant and unprincipled poor of the metropolis inclined it to a short-sighted, selfish course of conduct — rendering it a powerful weapon in the hands either of the demagogue or of the plutocratic senate, equally effective for resisting genuine reforms and for destroying the institutions of the republic. As with the progress of the revolution the conservative checks began to weaken and disappear, the comitia became more and more subject to vio-

lence and coercion. The comitial prosecutions of this period partook of the same revolutionary character. From the time of Sulla the assemblies were overshadowed by the military power. Under his dictation they surrendered to the senatorial courts nearly all that remained of their judicial function, and they seriously crippled their legislative power in favor of a reaction to the pre-Hortensian constitution. After a brief interval of bondage to the senate (81–70) they recovered their legislative freedom, only to subserve for the future the alliance now formed between the tribunes of the plebs and the great proconsuls. From the accession of Julius Cæsar to the dictatorship (49) their power rapidly declined. They yielded to him a large share of their legislative and even of their elective function. After a brief period of pretended liberty following the assassination of the dictator, they lapsed with the fall of the republic into utter insignificance.

The comitia had filled a large place in the history of the state. They were the chief factor of constitutional progress and of beneficent legislation. Their development and decline involved the prosperity and the ruin of the republic. For the world they have a higher value. The tribal assembly, supporting the plebeian tribunate, was the storm centre of long, heroic struggles for human rights. The fact that it championed this cause, that it met with some success in the conflict, that a Gracchus deemed it worthy to undertake the social regeneration of the world, has given the institution a universal and a permanent interest.

BIBLIOGRAPHY

From this list are excluded the titles of all works which, treating of other than Roman institutions, are referred to in this volume for comparative purposes, and of all sources which are accessible in well-known, standard editions.

Abbott, F. F. A History and Description of Roman Political Institutions. Boston, 1901.

—— The Constitutional Argument in the Fourth Catilinarian Oration. *Classical Journal*, ii (1907). 123–5.

Abhdl. d. Akad. d. Wiss. zu Berlin. = *Philologische und historische Abhandlungen der königlichen Akademie der Wissenschaften zu Berlin.*

Abhdl. d. bayer. Akad. d. Wiss. = *Abhandlungen der königlich bayerischen Akademie der Wissenschaften.* Munich.

Abhdl. sächs. Gesellsch. d. Wiss. = *Abhandlungen der philologisch-historische Classe der Wissenschaften zu Leipzig.*

Ackermann, H. Die räumlichen Schranken der tribunizischen Gewalt. Program. Rostock, 1891.

Aelius Donatus. Commentum Terenti, ed. P. Wessner. 2 vols. Leipzig, 1902, 1905.

Ahren, E. A. J. Die drei Volkstribunen Ti. Gracchus, M. Drusus, und P. Sulpicius. Leipzig, 1836.

Ampère, J. J. Histoire Romaine à Rome. 4 vols. Paris, 1866–1872.

Archiv f. lat. Lexicog. = *Archiv für lateinische Lexicographie und Grammatik . . . als Ergänzung zu dem Thesaurus linguae Latinae*, ed. E. von Wölfflin. Leipzig.

Arndts, D. Die lex Maenia de dote vom Jahre der Stadt Rom 568. *Zeitschrift für Rechtsgeschichte*, vii (1868). 1–44.

Arnim, H., von. Ineditum Vaticanum. *Hermes*, xxvii (1892). 118–30.

Arnobius, Adversus Nationes libri vii, rec. A. Reifferscheid. Vienna, 1875.

Arnold, W. T. The Roman System of Provincial Administration. New ed. Oxford, 1906.

Auct. Inc. de Diff. = Auctor Incertus (Cornelius Fronto?), (in) Grammatici Latini, ed. Keil, vii. 519–32.

Aust, E. Die Religion der Romer. Münster, 1899.

Babelon, E. Description historique et chronologique des monnaies de la république Romaine. 2 vols. Paris, 1885, 1886.

Babelon, E. Les origines de la monnaie. Paris, 1897.
—— Traité des monnaies Grecques et Romaines, i. Paris, 1901.
Bardt, C. Die Priester der vier grossen Collegien aus römisch-republikanischer Zeit. Program. Berlin, 1871.
—— Zur lex Caecilia Didia und noch einmal: Senatssitzungstage der späteren Republik. *Hermes*, ix (1875). 305–18.
Beiträge zur alten Geschichte. Leipzig. Beginning with vol. v the periodical is termed *Klio*, with *Beitr. z. alt. Gesch.* as a sub-title.
Beloch, J. Campanien: Topographie, Geschichte, und Leben der Umgebung Neapels im Altertum. Berlin, 1879.
—— Der italische Bund unter Roms Hegemonie. Leipzig, 1880.
—— Die Bewölkerung der griechisch-römischen Welt. Leipzig, 1886.
—— Die Bewölkerung Italiens im Altertum. *Beitr. z. alt. Gesch.* iii (1903). 471–90.
Belot, E. Histoire des chevaliers Romaines, etc. 2 vols. Paris, 1866, 1873.
—— De la révolution économique et monétaire qui eut lieu à Rome au milieu du III[e] siècle avant l'ère Chrétienne, etc. Paris, 1885.
Berl. phil. Wochenschr. = *Berliner philologische Wochenschrift.*
Berliner Studien = *Berliner Studien für classische Philologie und Archaeologie.*
Bernhöft, F. Staat und Recht der römischen Königszeit im Verhältniss zu verwandten Rechten. Stuttgart, 1882.
Berns, C. De comitiorum tributorum et conciliorum plebis discrimine. Inaugural dissertation. Wetzlar, 1875.
Ber. sächs. Gesellsch. d. Wiss. or *Verhdl. d. sächs. Gesellsch. d. Wiss.* = *Berichte über die Verhandlungen der königlich sächsischen Gesellschaft der Wissenschaften zu Leipzig. Philologisch-historische Classe.*
Bertolini, C. I celeres ed il tribunus celerum; contributo alla storia della constituzione dell' antica Roma. Rome, 1888.
Billeter, G. *Gesch. d. Zinsfuss.* = Geschichte des Zinsfusses in griechisch-römischen Altertum bis auf Justinien. Leipzig, 1898.
Blasel, J. Die Motiven der Gesetzgebung des C. Sempronius Gracchus. Trieste, 1878.
Bloch, A. Le praefectus fabrum, ii. *Musée Belge*, ix (1905). 352–78.
Bloch, G. Recherches sur quelques gentes patriciennes, (in) Mélanges d'archéologie et d'histoire de l'école Francaise de Rome, 241–76. 1882.
—— Orig. d. sén. = Les origines du sénat Romain; recherches sur la formation et la dissolution du sénat patricien. Paris, 1883.
—— La réforme démocratique à Rome au III[e] siècle av. J. C. *Revue historique*, xxxii (1886). 1–32, 241–89.
—— Observations sur le procès des Scipions. *Revue des études anciennes*, viii (1906). 93–110, 191–228, 287–322.
Bloch, L. Die ständischen und sozialen Kämpfe in der römischen Republik. Leipzig, 1900.

Blume, F., Lachmann, K., and Rudorff, A. F. [Röm. Feldmess.] Die Schriften der römischen Feldmesser, ii. Berlin, 1852. Vol. i is the Gromatici Veteres, ed. K. Lachmann.

Böckh, A. Metrologische Untersuchungen. Berlin, 1838.

Bormann, E. Die älteste Gliederung Roms, (in) Eranos Vindobonensis, 345–58. Vienna, 1893.

Botsford, G. W. On the Distinction between Comitia and Concilium. *Transactions of the American Philological Association*, xxxv (1904). 21–32.

—— Social Composition of the Primitive Roman Populus. *Political Science Quarterly*, xxi (1906). 498–526.

—— Some Problems connected with the Roman Gens. ibid. xxii (1907). 663–92.

—— The Lex Curiata. ibid. xxiii (1908). 498–517.

Bouchè-Leclercq, A. Histoire de la divination dans l'antiquité, iv. 134–285. Paris, 1882.

—— Augures, (in) Daremberg et Saglio, Dict. i. 550–60. Auspicia. ibid. i. 580–5.

Borgeaud, C. Histoire du plébiscite: le plébiscite dans antiquité. Geneva and Paris, 1887.

Brassloff, S. Beiträge zur Erläuterung der lex Acilia repetundarum. *Wiener Studien*, xxvi (1904). 106–17.

Breda. Die Centurienverfassung des Servius Tullius. Bromberg, 1848.

Bröcker, L. O. Untersuchungen über die Glaubwürdigkeit der altrömischen Verfassungsgeschichte. Hamburg, 1858.

—— Untersuchungen über die Glaubwürdigkeit der altrömischen Geschichte. Basel, 1868.

Bruncke, H. Beiträge zur Entwickelungsgeschichte des römischen Heerwesens. *Philol.* xl (1881). 357–77.

Bruns, C. G. Fontes iuris Romani antiqui. 6th ed. Freiburg, 1893.

—— Geschichte und Quellen des römischen Rechts, (in) Holtzendorff, F. von, and Kohler, J. Encyklopädie der Rechtswissenschaft in systematischer Bearbeitung, i. 70 ff. 6th ed. (1st ed. of Kohler's revision). 2 vols. Leipzig and Berlin, 1904.

Bücheler, F. Umbrica. Bonn, 1883.

Buck, C. D. A Grammar of Oscan and Umbrian. Boston, 1904.

Büdinger, M. Cicero und der Patriciat, eine staatsrechtliche Untersuchung. *Denkschr. d. kaiserl. Akad. d. Wiss.* xxi (1881). 211–74.

—— Der Patriciat und das Fehderecht in den letzten Jahrzehnten der römischen Republik. ibid. xxxvi (1888). 81–125.

Bürger, C. P., Jr. Sechzig Jahre aus der älteren Geschichte Roms, 418–358. Historisch-kritische Forschungen. Amsterdam, 1891.

—— Neue Forschungen zur älteren Geschichte Roms, i, ii. Amsterdam, 1894, 1895.

Cagnat, R. Cours d'épigraphie Latine. 3d ed. Paris, 1898.
—— Equites, (in) Daremberg et Saglio, Dict. ii. 771–89.
Callegari, E. La legislazione sociale di Caio Gracco. Padua, 1896.
Cantalupi. La magistratura di Silla durante la guerra civile. Rome, 1899.
Carter, J. B. Roma Quadrata and the Septimontium. *Am. Journ. of Archaeol.* xii (1908). 172–83.
Casagrandi, V. Le minores gentes ed i patres minorum gentium, etc. Torino, 1892. Unscientific.
Cassiodorus, Magnus Aurelius. Opera omnia, (in) Patrologiae cursus completus, lxix, ed. Migne. Paris, 1865.
Charis. = Charisius, F. S. Ars grammatica (or Instit. Gram.), (in) Grammatici Latini, i, ed. Keil. Leipzig, 1857.
Christ, W. Sprachliche Verwandtschaft der Gräko-Italiker. *Sitszb. d. k. bayer Akad.* 1906. 151–246.
Christensen, H. Die ursprüngliche Bedeutung der Patres. *Hermes*, ix (1875). 196–216.
CIL. = Corpus inscriptionum Latinarum, ed. Mommsen and others. Berlin. The first edition is cited, unless otherwise indicated.
CJA. = Corpus iuris Attici, ed. I. B. Telfy. Leipzig and London, 1868.
Clason, O. Kritische Erörterungen über die römischen Staat. Rostock, 1871.
—— Zur Frage über die reformierte Centurienverfassung. *Heidelberger Jahrbücher der Literatur*, lxv (1872). 221–37.
Conway, R. S. I due strati di populazione Indo-Europea del Lazio e dell' Italia antica. *Rivista di storia antica*, vii (1903). 422–4.
Corp. Gloss. Lat. = Corpus glossariorum Latinorum. 7 vols. Ed. G. Loewe, G. Goetz, and others. Leipzig, 1876–1903.
Corssen, W. [Ausspr.]. Ueber Aussprache Vokalismus und Betonung der lateinischen Sprache. 2d ed. 2 vols. Leipzig, 1868, 1870.
—— [Beitr. z. ital. Sprachk.] Beiträge zur italischen Sprachkunde. Leipzig, 1876.
Cuntz, O. Polybius und sein Werk. Leipzig, 1902.
Cuq, E. Les juges plébéiens de la colonie de Narbonne, (in) Mélanges d'archéologie et d'histoire, 297–311. Paris, 1881.
—— Les institutions juridiques des Romains. 2d ed. 2 vols. Paris, 1891, 1902.
—— Lex publica, (in) Daremberg et Saglio, Dict. iii. 1121–74.

Daremberg et Saglio, [Dict.]. Dictionnaire des antiquités Grecques et Romaines, i–iii (A–M). Paris, 1873–1904.
Deecke, W. Die Falisker: eine geschichtlich-sprachliche Untersuchung. Strassburg, 1888.
Delbrück, H. Die römische Manipulartaktik. *Hist. Zeitschr.* N. F. xv (1884). 239–64.

Delbrück, [Gesch. d. Kriegsk.] Geschichte der Kriegskunst im Rahmen der politischen Geschichte, i: das Altertum. Berlin, 1900.

Deloume, A. Les manieurs d'argent à Rome. Paris, 1890.

Denkschr. d. kaiserl. Akad. d. Wiss. = *Denkschriften der kaiserlichen Akademie der Wissenschaften. Philosophisch-historische Classe.* Vienna.

De Sanctis, G. Storia dei Romani: la conquista del primato in Italia. 2 vols. Milan, Turin, etc., 1907.

Diodorus Siculus. Bibliotheca historica, bks. i–xviii, ed. Vogel. Leipzig. The remaining bks. and frags. ed. C. Müller. Didot. Paris, 1842, 1844.

Dreyfus, R. Essai sur les lois agraires sous la république Romaine. Paris, 1898.

Drumann-Gröbe, Gesch. Roms = Drumann, W., Geschichte Roms in seinem Uebergange von der republikanischen zur monarchischen Verfassung, ed. P. Gröbe. i–iii, iv. 1. Berlin, 1899–1908.

Dupond, A. De la constitution et des magistratures Romaines sous la république. Paris, 1877.

Egbert, J. C. Introduction to the Study of Latin Inscriptions. New York, 1906.

Eigenbrodt, A. De magistratuum Romanorum iure intercedendi. Inaugural dissertation. Leipzig, 1875.

Ephem. Ep. = *Ephemeris epigraphica.* Rome and Berlin.

Exup. = Julius Exsuperantius. Opusculum de Marii, Lepidi ac Sertorii bellis civilibus, (in) Sallust, Omnia opera, 507–15. Paris, 1821. This work is also referred to as Jul. Exuper.

Ferrero, G. Greatness and Decline of Rome. Translated into English by Zimmern and others. 5 vols. New York, 1907–1909. Suggestive but untrustworthy.

Festg. f. F. Dahn = Festgabe für Felix Dahn zu seinem fünfzigjährigen Doktorjubiläum gewidmet. Breslau, 1905.

Forcellini, A. Totius Latinitatis lexicon, ed. V. De-Vit. 6 vols. Prati, 1858–1875.

Forsyth, W. Life of Marcus Tullius Cicero, 2 vols. New York, 1865.

Fowler, W. W. Julius Caesar. New York and London, 1894.

—— Notes on Gaius Gracchus. *English Historical Review*, xx (1905). 209–27.

—— Gaius Gracchus and the Senate. *Classical Review*, x (1896). 278–80.

—— The Roman Festivals of the Period of the Republic. London, 1899.

Freeman, E. A. Lucius Cornelius Sulla, (in) Historical Essays, ii. 271–306. London, 1873.

Fröhlich, F. Beiträge zur Kriegsführung und Kriegskunst der Römer zur Zeit der Republik. Berlin, 1886.

Fröhlich (no initial given). P. Clodius Pulcher, (in) Pauly-Wissowa, Real Encycl. iv. 82–8. L. Cornelius Sulla Felix. ibid. iv. 1522–66.

Frontin. Contr. = Frontinus, Julius. De controversiis, (in) Grom. Vet. 9–26, ed. Lachmann. Berlin, 1848.

Fronto, M. Cornelius. Epistulae, ed. S. A. Naber. Leipzig, 1867. [Ver = Ad Verum.]

Fustel de Coulanges. The Ancient City. Translated from the French. Boston and New York, 1889.

Gardner, P. As, (in) Smith, W., Dict. i. 201–8. 3d ed. 2 vols. London, 1890, 1891.

Garofalo, F. P. I fasti dei tribuni della plebe della repubblica Romana. Catania, 1889.

—— L' origine e l' elezione dei tribuni e degli edili della plebe, etc. Catania, 1890. Not altogether accurate.

—— Sul plebiscitum Atinium. Catania, 1896.

—— Lex Cincia de donis et muneribus. *Bulletino dell' istituto di diritto Romano*, xv (1903). 310–12.

Genz, H. [Centurienverf.]. Die servianische Centurienverfassung. Sorau, 1874.

—— [Patr. Rom.] Das patricische Rom. Berlin, 1878.

—— Die Centuriat-comitien nach der Reform. Freienwald, 1882.

Gerathewohl, H. [Reiter und Rittercent.] Die Reiter und die Rittercenturien zur Zeit der römischen Republik. Munich, 1886.

Gilbert, O. Geschichte und Topographie der Stadt Rom im Altertum. 3 parts. Leipzig, 1883–1890.

Girard, P. F. [Hist. d. org. jud.] Histoire de l'organisation judiciaire des Romains, i. Paris, 1901.

—— [Textes] Textes de droit Romain. 3d. ed. Paris, 1903.

Goguet, R. [Cent.] Droit Romain des centuries. Thesis. Paris, 1890. Of little value.

Gomont, M. H. Les chevaliers Romains depuis Romulus jusqu'à Galba. Paris, 1854.

Göttling, K. W. Geschichte der römischen Staatsverfassung. Halle, 1840.

Gramm. Lat. = Grammatici Latini, ed. H. G. T. Keil. 7 vols. Leipzig, 1855–1880.

Gran. Licin. = Granius Licinianus. Annalium quae supersunt, ed. Pertz. Berlin, 1857.

Greenidge, A. H. J. The Lex Sempronia and the Banishment of Cicero. *Classical Review*, vii (1893). 347 f.

—— Roman Public Life. London and New York, 1901.

—— Legal Procedure of Cicero's Time. London and New York, 1901.

—— A History of Rome during the Later Republic and the Early Principate, i. New York, 1903.

Greenidge, A. H. J. The Authenticity of the Twelve Tables. *English Historical Review*, xx (1905). 1–21.

Greenidge and Clay. Sources for Roman History, 133–70 B.C. Oxford, 1903.

Grenfell, B. P., and Hunt, A. S. Oxyrhynchus Papiri, iv. 90–116. London, 1904. For the newly discovered epitome of Livy, including text and commentary. See also Kornemann.

Grom. Vet. = Gromatici veteres, ed. K. Lachmann. Berlin, 1848.

Grotefend, C. L. Imperium Romanum tributim descriptum. Hannover, 1863.

Gudeman, A. Concilium, (in) Thesaurus linguae Latinae, iv. 44–8.

Guiraud, P. De la réforme des comices centuriates au III[e] siècle av. J.-C. *Revue historique*, xvii (1881). 1–24.

Gurlitt, L. Lex Clodia de exilio Ciceronis. *Philol.* N. F. xiii (1900). 578–83.

Habel, P. Apparitores, (in) Pauly-Wissowa, Real-Encycl. ii. 191–4.

Hackel, H. Die Hypothesen über die sogenannte lex Iulia municipalis. *Wiener Studien* (1902). 552–62.

Haeberlin, E. J. Del più antico sistema monetario presso i Romani, v. *Rivista italiana di numismatica*, xix (1906). 611–46. Translation of an article in the *Berliner Münzblätter*, 1905, 1906.

Hagge. Einige Bemerkungen über die lex Servilia repetundarum. Glückstadt, 1845.

Hallays, A. Les comices à Rome. Dissertation. Paris, 1890. Of little worth.

Hartmann, Ambitus, (in) Pauly-Wissowa, Real-Encycl. i. 1800–3.

Hegewisch, D. H. Geschichte der gracchischen Unruhen in der römischen Republik. Hamburg, 1801.

Helbig, W. Die Italiker in der Poebene. Leipzig, 1879.

—— (An illustration of Adrogatio.) *Comptes rendus de l'acad. des inscriptions et belles-lettres*, xxi (1893). 350–3.

—— Contribution à l'histoire de l'equitatus Romain. ibid. 1904. ii. 190–201.

—— Les attributs des saliens. ibid. 206–12.

—— Sur les attributs des saliens. *Mémoires de l'acad. des inscriptions et belles-lettres*, xxvii[2] (1905). 205–76.

—— Zur Geschichte des römischen Equitatus A. Die Equites als berittene Hopliten. *Abhdl. d. bayer. Akad. d. Wiss.* xxiii (1905). 267–317.

—— Die Castores als Schutzgötter des römischen Equitatus. *Hermes*, xl (1905). 101–15.

Hennebert, A. Histoire de la lutte entre les patriciens et les plébéiens à Rome. Gand, 1845.

Hennes. Das dritte valerisch-horatische Gesetz und seine Wiederholungen. Program. Bonn, 1880.

Henze. Publius Cornelius Scipio Africanus (Maior), (in) Pauly-Wissowa, Real-Encycl. iv. 1462–70.

Hermes = *Hermes: Zeitschrift für classische Philologie.* Berlin.

Herzog, E. Lex sacrata und das Sacrosanctum. *Jahrb. f. cl. Philol.* xxii (1876). 139–50.

—— Die Charakter der Tributcomitien im fünften und sechsten Jahrhundert der Stadt und die Reform der Centuriatcomitien. *Philol.* xxiv (1876). 312–29.

—— Glaubwürdigkeit der Gesetze bis 387 der Stadt. Tübingen, 1881.

—— [Röm. Staatsverf.] Geschichte und System der römischen Staatsverfassung. 2 vols. Leipzig, 1884, 1887.

Hesky, R. Anmerkungen zur lex Acilia repetundarum. *Wiener Studien*, xxv (1903). 272–87.

Heydenreich, E. Livius und die römische Plebs, (in) Sammlung gemeinverständlicher wissenschaftlicher Vorträge, xvii (1882). 581–628.

Hill, G. F. Handbook of Greek and Roman Coins. New York, 1899.

Hirschfeld, O. Der Endtermin der gallischen Statthalterschaft Caesars. *Klio*, iv (1904). 76–87.

Hoffman, E. Die patricischen und plebeiischen Curien. Vienna, 1879.

Hoffmeister, K. Die wirtschaftliche Entwickelung Roms. Vienna, 1899.

Holzapfel, L. Il numero dei senatori Romani durante il periodo dei re. *Rivista di storia antica*, ii. 2 (1897). 52–64.

—— Die drei ältesten römischen Tribus. *Beitr. z. alt. Gesch.* i (1901). 228–55.

Hüllmann, K. D. Römische Grundverfassung. Bonn, 1832.

—— Ursprünge der römischen Verfassung durch Vergleichungen erläutert. Bonn, 1835.

Hülsen, C. Caere, (in) Pauly-Wissowa, Real-Encycl. iii. 1281–3.

—— The Roman Forum. Translated from the 2d German edition by J. B. Carter. 2d English ed. Rome, 1909.

Hultsch, F. Denarius, (in) Pauly-Wissowa, Real-Encycl. v. 202–15.

Humbert, G. Accensus, (in) Daremberg et Saglio, Dict. i. 16 ff. Aedilis. ibid. 95–100. Ager publicus. ibid. 133–8. Census. ibid. 1003–17. Classis. ibid. 1224 f. Comitia. ibid. 1374–1401. Concilium. ibid. 1432 f. Contio. ibid. 1484 f. Frumentariae leges. ibid. ii. 1346–8.

Huschke, Ph. E. [Verf. d. Serv.] Die Verfassung des Königs Servius Tullius als Grundlage zu einer römischen Verfassungsgeschichte. Heidelberg, 1838.

—— Die lex Sempronia iudiciaria und ihr Verhältniss zur lex Acilia repetundarum. *Zeitschr. f. Rechtsgesch.* v (1866). 46–84.

Hyg. Cond. Agr. = Hyginus. De condicionibus, agrorum, (in) Grom. Vet. ed. K. Lachmann, 113–24. [Lim. Const.] De limitibus constituendis ibid. 166–208.

Ihne, W. The Asylum of Romulus. *Classical Museum*, iii (1846). 190–3.

—— Forschungen auf dem Gebiete der römischen Verfassungsgeschichte. Frankfurt am Main, 1847. This study is translated into English by

Haywood under the title, Researches into the History of the Roman Constitution. London, 1853.

Ihne, W. Ueber die Entstehung und die ältesten Befugnisse des römischen Tribunats. *Rhein. Mus.* xxi (1866). 161–79.

——Die Entstehung der servianischen Verfassung, (in) Symbola philologorum Bonnensium, 629–44. 1864–1867.

—— History of Rome. 5 vols. London, 1871–1882.

—— Die Entwickelung der Tributcomitien. *Rhein. Mus.* N. F. xxviii (1873). 353–79.

—— Early Rome. New York, 1890.

Inc. Auct. = Incertus Auctor. Magistratuum et sacerdotiorum P. R. expositiones ineditae, ed. Ph. E. Huschke. Vratislavia, 1829.

Ined. Vat. See Arnim, H. von.

Isid. Etym. = Isidorus Hispalensis. Etymologiae, (in) Opera omnia, iii, ed. Migne. Paris, 1878.

Isler, M. Ueber das poetelische Gesetz de ambitu. *Rhein. Mus.* xxviii (1873). 473–7.

Jahrb. f. Philol. = *Neue Jahrbücher für Philologie und Paedagogik.* Second title: *Jahrbücher für classische Philologie.* Leipzig.

Jahresb. ü. Altwiss. = *Jahresbericht über die Fortschritte der classischen Altertumswissenschaft.* Leipzig.

John, C. Entstehungsgeschichte der catilinarischen Verschwörung, *Jahrb. f. cl. Philol.* Supplb. viii (1875, 1876). 701–819.

Jordan, H. Topographie der Stadt Rom im Altertum. 2 vols. Berlin, 1878–1907. I. iii (1907) is edited by C. Hülsen.

—— Die Könige im alten Italien. Berlin, 1887.

Jul. Exuper. See Exup.

Julius Victor, C. Ars Rhetorica, (in) Orelli-Baiter, Ciceronis Opera, V. 195–269. Turici, 1833.

Kalb, W. Jahresbericht über römischen Juristen für 1901–1905. *Jahresb. ü. Altwiss.* cxxxiv (1906). 1–48.

Kappeyne van de Coppello, J. [Comitien] Drei Abhandlungen zum römischen Staats- und Privatrecht, i: Betrachtungen über die Comitien. 2d ed. Berlin, 1891.

Karlowa, O. Der römische Civilprocess zur Zeit der Legisactionen. Berlin, 1872.

—— Römische Rechtsgeschichte. 2 vols. Leipzig, 1885, 1901.

Keil, J. Zur lex Cornelia de viginti quaestoribus. *Wiener Studien,* xxiv (1902). 548–51.

Klebs, E. Die Stimmenzahl und die Abstimmungsordnung der reformierten servianischen Verfassung. *Zeitschr. d. Savignyst.* xii (1891). 181–244.

Klebs, L. Aimilius Paullus, (in) Pauly-Wissowa, Real-Encycl. i. 576–80. M. Aemilius Scaurus. ibid. 584–8. Appuleius. ibid. ii. 261–9.
Kleineidam, F. Beiträge zur Kentniss der lex Poetelia, (in) Festg. f. F. Dahn, ii. 1–30. Breslau, 1905.
Klio. See *Beiträge zur alten Geschichte.*
Kniep. Societas publicanorum. Jena, 1896.
Köhm, J. Altlateinische Forschungen. Leipzig, 1905.
Kornemann, E. Die cäsarische Kolonie Karthago und die Einführung römischer Gemeindeordnung in Africa. *Philol.* N. F. xiv (1901). 402–26.
—— Zur Geschichte der Gracchenzeit. Reprinted from *Beitr. z. alt. Gesch.* Beiheft i. 1903.
—— Die neue Livius-Epitome aus Oxyrhynchus. *Beitr. z. alt. Gesch.* Beiheft ii. 1904.
—— Polis und Urbs. *Klio*, v (1905). 72–92.
—— Collegium, (in) Pauly-Wissowa, Real-Encycl. iv. 380–480. Coloniae. ibid. 511–88. Concilium. ibid. 801 ff.
Krüger, P., and Mommsen, Th. Anecdoton Livianum. *Hermes*, iv (1870). 371–6.
Krüger-Brissaud, Sourc. d. Droit Rom. = Krüger, P. Histoire des sources du droit Romain. Trad. de l'Allemand par M. Brissaud. Paris, 1894.
Kubitschek, J. W. De Romanorum tribuum origine ac propogatione. Vienna, 1882.
—— Imperium Romanum tributim discriptum. Leipzig, 1889.
—— Aedilis, (in) Real-Encycl. i. 448–64. Aerarius. ibid. 674–6. Aes equestre. ibid. 682–4. Ager. ibid. 780–93. As. ii. 1499–1513. Census. ibid. iii. 1914–24.
Kübler, B. Calata comitia, (in) Pauly-Wissowa, Real-Encycl. iii. 1330–4. Capite censi. ibid. 1521–3. Centuria. ibid. 1952–62. Classis. ibid. 2630–2. Consul. ibid. iv. 1112–38. Equites Romani. ibid. vi. 272–312.
Kübler, B., and Hülsen, C. Curia, (in) Pauly-Wissowa, Real-Encycl. iv. 1815–26.

Labatut, E. Corruption électorale chez les Romains. Paris, 1876.
Lambert, E. L'histoire traditionelles des XII Tables et les critères d'authenticité des traditions en usage dans l'école de Mommsen, (in) Mélanges Ch. Appleton, 503–626. Lyons and Paris, 1903.
—— La fonction du droit civil comparé, 390–718. Paris, 1903.
Lanciani, R. Ruins and Excavations of Ancient Rome. Boston, 1897.
—— New Tales of Old Rome. Boston, 1901.
Lange, L. Römische Altertümer. 3 vols. 2d and 3d eds. Berlin, 1876, 1879.
—— Kleine Schriften. 2 vols. Göttingen, 1887.
Lécrivain, C. Gens, (in) Daremberg et Saglio, Dict. ii. 1494–1516.
Leinveber, A. Die Legion des Livius. *Philol.* N. F. xv (1902). 32–41.

Leist, B. W. Graeco-italische Rechtsgeschichte. Jena, 1884.
—— Alt-arisches Ius Gentium. Jena, 1889.
—— Alt-arisches Ius Civile. 2 vols. Jena, 1892, 1896.
Lengle, J. Untersuchungen über die sullanische Verfassung. Freiburg im Breisgau, 1899.
Lenormant, F. As, (in) Daremberg et Saglio, Dict. i. 454–64.
—— Colonies Romains, ibid. i. 1303–21.
Leonhard, R. Adoptio, (in) Pauly-Wissowa, Real-Encycl. i. 398–400. Adrogatio. ibid. 419–21.
Le Tellier, M. [Organ. cent.] L'organisation centuriate et les comices par centuries. Thesis. Paris, 1896.
Liebenam, W. Zur Geschichte und Organisation des römischen Vereinswesens. Leipzig, 1890.
—— Comitia, (in) Pauly-Wissowa, Real-Encycl. iv. 679–715. Curiata lex. ibid. iv. 1826–30. Fabri, (in) Ruggiero, Diz. Ep. iii. 4–18.
Lieboldt, K. Die Ansichten über die Entstehung und das Wesen der gentes patriciae in Rom aus der Zeit der Humanisten bis auf unsere Tage, i, ii. Meerane, 1890.
Liers, H. [Kriegsw. d. Alt.] Das Kriegswesen der Alten mit besonderer Berücksichtigung der Strategie. Breslau, 1895.
Livy, new epitome of. See Grenfell and Hunt; also Kornemann.
Long, G. The Decline of the Roman Republic. 5 vols. London, 1864–1874.

Madvig, J. N. [Röm. Staat.] Die Verfassung und Verwaltung des römischen Staates. 2 vols. Leipzig, 1881, 1882.
Marchi, A. de. Il culto privato di Roma antica. 2 vols. Milan, 1896, 1903. Uncritical, but to some extent useful.
Marquardt, J. Historiae equitum Romanorum. Berlin, 1840.
—— [Röm. Staatsv.] Römische Staatsverwaltung. 3 vols. 2d ed. revised by Dessau and others. Leipzig, 1881, 1885.
—— Das Privatleben der Römer. 2d ed. Leipzig, 1886.
Matzat, H. Römische Chronologie. 2 vols. Berlin, 1883, 1884.
Maue, H. Der praefectus fabrum. Halle, 1887.
Mélanges d'archéologie et d'histoire de l'école Française de Rome.
Mercklein, D. L. Die Cooptation der Römer. Leipzig, 1848.
Merguet, H. Lexikon zu den Schriften Ciceros, i, ii. Jena, 1877–1887.
Meyer, E. Untersuchungen über Diodor's römische Geschichte. *Rhein. Mus.* xxxvii (1882). 610–27.
—— [Gesch. d. Alt.] Geschichte des Altertums, ii, v. Stuttgart, 1893 (and Berlin), 1902.
—— [Gesch. d. Gracch.] Untersuchungen zur Geschichte der Gracchen, (in) Festschriften . . . der vereinigten Friederichs-Universität Halle-Wittenberg, 1894. Philos. Fak. 79–109.

Meyer, E. Der Ursprung des Tribunats und die Gemeinde der vier Tribus. *Hermes*, xxx (1895). 1–24.
—— Die angebliche Centurienreform Sullas. *Hermes*, xxxiii (1898). 652–4.
—— Plebs, (in) Handwörterbuch der Staatswissenschaft, vi. 98–106. 2d ed. Jena, 1901.
Michel, N. H. Du droit de cité Romaine: études d'épigraphie juridique. Paris, 1885.
Milani, L. A. Studi e materiali di archaeologia e numismatica. 3 vols. Florence, 1899–1905.
Mispoulet, J. B. Les institutions politiques des Romains. 2 vols. Paris, 1882, 1883.
—— Études d'institutions Romaines. Paris, 1887.
Mommsen, Th. [Röm. Tribus.] Die römischen Tribus in administrativer Beziehung. Altona, 1834.
—— De apparitoribus magistratuum Romanorum. *Rhein. Mus.* N. F. vi (1846). 1–57.
—— Ueber das thorische Ackergesetz. *Ber. sächs. Gesellsch. d. Wiss.* i (1849). 89–101.
—— Ueber die lex Mamilia Roscia Peducaea Alliena Fabia, (in) Röm. Feldmess. ii. 221–6. Berlin, 1852.
—— Die Stadtrechte der lateinischen Gemeinden Salpensa und Malaca in der Provinz Baetica. *Abhdl. sächs. Gesellsch. d. Wiss.* ii. (1857). 361–507.
—— Die lex curiata de imperio. *Rhein. Mus.* N. F. xiii (1858). 565–73.
—— Die römische Chronologie bis auf Caesar. 2d ed. Berlin, 1859.
—— Zwei Sepulcralreden aus der Zeit Augusts und Hadrians. *Abhdl. d. Akad. d. Wiss. zu Berlin.* 1863, 455–89.
—— Römische Forschungen. 2 vols. Berlin, 1864, 1879.
—— Lex coloniae Iuliae Genetivae Urbanorum sive Ursonis data a.u.c. DCCX. Additamentum ad corporis volumen ii. *Ephem. Ep.* ii (1875). 105–51.
—— Ein zweites Bruchstück des rubrischen Gesetzes vom Jahre 705 Roms. *Hermes*, xvi (1881). 24–41.
—— Römisches Staatsrecht. 1st and 3d eds. 3 vols. Leipzig, 1887.
—— Abriss des römischen Staatsrechts. Leipzig, 1893.
—— Römisches Strafrecht. Leipzig, 1899.
—— History of Rome. Translated from the German. 5 vols. New York, 1900.
—— Lex municipii Tarentini. *Ephem. Ep.* ix (1903). 1–11.
Mommsen-Blacas = Mommsen, Histoire de la monnaie Romaine. Translated from the German by Le Duc de Blacas. 4 vols. Paris, 1865–1875.
Mommsen, Th. and others. Zum ältesten Strafrecht der Kulturvölker. Leipzig, 1905.

Morlot, E. [Comices élect.] Les comices électoraux sous la république Romaine. Thesis. Paris, 1884.

Moye, M. Les élections politiques sous la république Romaine. Thesis. Bordeaux, 1896.

Mühl, F. V. [App. Sat.] De L. Appuleio Saturnino tribuno plebis. Basel, 1906.

Muirhead, J. Historical Introduction to the Private Law of Rome. Edinburgh, 1886.

Müller, A. Die Strafjustiz im römischen Heere. *N. Jahrb. f. kl. Altertum*, xvii (1906). 550–77.

Müller, I. [Hdb. d. kl. Altwiss.] Handbuch der klassischen Altertumswissenschaft. Nördlingen.

Müller, J. J. Studien zur römischen Verfassungsgeschichte. *Philol.* xxxiv (1876). 96–136.

Müller-Deecke = Müller, K. O. Die Etrusker. 2 vols. Revised by W. Deecke. Stuttgart, 1877.

Munderloh, I. G. H. W. Aus der Zeit der Quiriten. Weimar, 1872.

Münzer, F. M. Claudius Marcellus, (in) Pauly-Wissowa, Real-Encycl. iii. 2738–55. Appius Claudius Pulcher. ibid. 2848 f. L. Cornelius Cinna. ibid. iv. 1282–7. L. Cornelius Scipio Asiagenus. ibid. iv. 1471–83. T. Didius. ibid. v. 407–10. Cn. Domitius Ahenobarbus. ibid. v. 1324–7.

Nettleship, H. Contributions to Latin Lexicography. Oxford, 1889.

N. Jahrb. f. kl. Alt. = *Neue Jahrbücher für das klassische Altertum, Geschichte und deutsche Literatur, und für Pädagogik.* Leipzig.

Neumann, C. Das Zeitalter der punischen Kriege. Breslau, 1883.

—— [Gesch. Roms.] Geschichte Roms während des Verfalles der Republik. 2 vols. Breslau, 1881, 1884.

Neumann, K. J. Die Grundherrschaft der römischen Republik, Die Bauernbefreiung und die Entstehung der servianischen Verfassung. Strassburg, 1900.

Niccolini, G. La questione dei processi degli Scipioni. *Rivista di storia antica*, iii (1898). Fasc. 4. 28–75.

Niebuhr, B. G. Römische Geschichte. 3 vols. 4th ed. Berlin, 1833–1843. Also the English translation by Hare and Thirlwall. Philadelphia, 1844.

—— Lectures on the History of Rome, edited and translated from the German by L. Schmitz. 3 vols. 3d ed. London, 1853.

Niemeyer, K. De equitibus Romanis. Gryphia, 1851.

Niese, B. Das sogenannte licinisch-sextische Ackergesetz. *Hermes*, xxiii (1888). 410–23.

—— [Röm. Gesch.] Grundriss der römische Geschichte nebst Quellenkunde. 3d ed. Munich, 1906.

—— Deiotarus, (in) Pauly-Wissowa, Real-Encycl. iv. 2401–4.

Nipperdey, K. Die leges annales der römischen Republik. *Abhdl. sächs. Gesellsch. d. Wiss.* v (1870). 1–88.
Nissen, A. Beiträge zum römischen Staatsrecht. Strassburg, 1885.
Nissen, H. Kritische Untersuchungen über die Quellen der vierten und fünften Dekade des Livius. Berlin, 1863.
—— Das Templum. Berlin, 1869.
—— Der Ausbruch des Bürgerkrieges 49 vor Chr. *Hist. Zeitschr.* xliv (1880). 409–45; xlvi. 48–105.
—— Italische Landeskunde. 2 vols. Berlin, 1883, 1902.
Nitzsch, K. W. Die Gracchen und ihre nächsten Vorgänger. Berlin, 1847.
—— Das Verhältniss von Heer und Staat in der römischen Republik. *Hist. Zeitschr.* vii (1862). 133–58.
—— [Röm. Rep.] Geschichte der römischen Republik. 2 vols. Ed. by G. Thouret. Leipzig, 1884, 1885.
Nonius Marcellus. Compendiosa doctrina. Emend. et adn. L. Müller. 2 vols. Leipzig, 1888.

Oberziner, G. Origine della plebe Romana. Leipzig and Genoa, 1901.
Obseq. = Iulii Obsequentis ab anno urbis conditae DV prodigiorum liber, (in) Weissenborn's Livy, vol. xii. 193–209. 2d ed. Berlin, 1881.
Olcott, G. N. Thesaurus linguae Latinae epigraphicae, i. Rome, 1904–1908.
Oliver, E. H. Roman Economic Conditions to the Close of the Republic. Toronto, 1907.
Orelli and Baiter, Index legum Romanorum quarum apud Ciceronem eiusque scholiastas item apud Livium, Velleium Paterculum, A. Gellium nominatim mentio fit, (in their) Ciceronis Opera, viii. 3.
Oxyrhynchus Papiri. See Grenfell and Hunt; also Kornemann.

Pais, E. Storia di Roma, I. i, ii. Torino, 1898, 1899.
—— [Leg. of Rom. Hist.] Ancient Legends of Roman History. Translated from the Italian. New York, 1905.
—— Ancient Italy. Translated from the Italian by C. D. Curtis. Chicago and London, 1908.
—— L' elezione del pontefice massimo Romano per mezzo delle XVII tribù. Naples, 1908.
—— A proposito dell' attendibilità dei fasti dell' antica repubblica Romana. *Rendiconti della reale accademia dei Lincei*, xxvii (1908). 33–68.
Pantaleoni, D. Della auctoritas patrum nell' antica Roma sotto le sue diverse forme. Torino, 1884.
Pappritz, R. Marius und Sulla. Gütersloh, 1899.
Pascal, C. Studi Romani, i, iii. Torino, 1896.
—— Di un studio recente sul processo degli Scipioni. *Riv. di stor. ant.* iv (1899). 268–71.
Pauly-Wissowa, Real-Encycl. = Pauly, Real-Encyclopädie der classischen

Altertumswissenschaft. New ed. by G. Wissowa, i–vi. 1. Stuttgart, 1894–1907.

Pelham, H. The Roman Curiae. (*Eng.*) *Journ. of Philol.* ix (1880). 266–79.

Pellegrini, G. Fregi arcaici Etruschi in terracotta, etc. (in) Milani, Studi e materiali, i. 87–118.

Pellegrino, D. Andeutungen über den ursprünglichen Religionsunterschied der römischen Patricier und Plebeier. Leipzig, 1842.

Peter, C. Die Epochen der Verfassungsgeschichte der römischen Republik, mit besonderer Berücksichtigung der Centuriatcomitien und der mit diesen vorgegangenen Veränderungen. Leipzig, 1841.

—— Studien zur römischen Geschichte mit besonderer Beziehung auf Th. Mommsen. Naumburg, 1861. A new enlarged ed. Halle, 1863.

—— Geschichte Roms. 4th ed. 3 vols. Halle, 1881.

Peter, H. [Reliquiae] Historicorum Romanorum reliquiae. 2 vols. Leipzig, 1870, 1906.

Philol. = *Philologus: Zeitschrift für das classische Altertum.* Leipzig.

Pinvert, L. Du droit de cité Romaine. Thesis. Paris, 1885.

Platner, S. B. The Topography and Monuments of Ancient Rome. Boston, 1904.

Pluss, H. T. [Centurienverf.] Die Entwickelung der Centurienverfassung in den beiden letzten Jahrhunderten der römischen Republik. Leipzig, 1870.

Podesta. Il tribunato della plebe in Roma dalla secessione della plebe sul monte Sacro all' approvazione della legge di Publilio Volerone. Parma, 1895.

Pöhlmann, R. Die Anfänge Roms. Erlangen, 1881.

—— Zur Geschichte der Gracchen. *Sitzb. d. bayer. Akad. d. Wiss.* 1907. 443–93.

Pol. Sci. Quart. = *Political Science Quarterly.* Boston and New York.

Poste, E. Gaii institutionum iuris civilis commentarii quatuor. Or, Elements of Roman Law by Gaius. With translation and commentary. Oxford, 1871.

Pott, A. F. [Etym. Forsch.] Etymologische Forschungen auf dem Gebiete der indo-germanischen Sprachen. 2d ed. 5 vols. Detmold, 1859–1873. This work includes the author's Wurzel-Wörterbuch der indo-germanischen Sprachen.

Priscianus. [Inst. Gram.] Institutionum grammaticarum libri xvii, ed. M. Hertz, (in) Gram. Lat. ii, ed. Keil. Leipzig, 1855.

Probus, Valerius. De litteris singularibus fragmentum, ed. Mommsen, (in) Gram. Lat. iv, ed. Keil. Leipzig, 1864.

Pseudacr. Schol. Cruq. ad Hor. = Pseudacronis Scholia in Horatium vetustiora. Ed. O. Keller. 2 vols. Leipzig, 1902, 1904.

Pseudo-Sall. Declam. in Cat. = Porcii Latronis Declamatio contra L. Sergium Catilinam, (in) C. Crispi Salustii quae extant, i. 260–87. Ed. C. H. Frotscher. Leipzig, 1825.

Ptaschnik, J. Die Wahl der Volkstribunen vor der Rogation des Volero Publilius. *Oesterreich. Gymn.* xiv (1863). 627–38.
—— Publilische Rogation. ibid. xvii (1866). 161–200.
—— Die Centuriengesetze von 305 und 415 U. C. ibid. xxi (1870). 497–525.
—— Stimmrecht der Patricier in den Tributcomitien. ibid. xxxii (1881). 81–102.

Regling, K. Zum älteren römischen und italischen Münzen. *Klio*, vi (1906). 489–524.
Rhein. Mus. = *Rheinisches Museum für Philologie.* Frankfurt am Main.
Richter, O. Die Topographie der Stadt Rom. 2d ed. Munich, 1901. (In) Müller, I. Hdb. d. kl. Altwiss. iii. 3.
Ritschl, F. W. Opuscula philologica. Or, Kleine philologische Schriften. 5 vols. Leipzig, 1866–1879.
Riv. d. Stor. ant. = *Rivista di storia antica e scienze affini.* Messina.
Roby, J. H. Roman Private Law in the Times of Cicero and of the Antonines. 2 vols. Cambridge (England), 1902.
Röm. Feldmess. See Blume, F., etc.
Roscher, W. H. Ausführliches Lexikon der griechischen und römischen Mythologie, i–iii. Leipzig, 1884–1902.
Rothstein, M. Suffragium, (in) Festschrift zu Otto Hirschfelds sechsigstem Geburtstage, 30–3. Berlin, 1903.
Rubino, J. [Röm. Verf.] Ueber den Entwickelungsgang der römischen Verfassung bis zum Höhepunkt der Republik. Cassel, 1839.
—— Ueber das Verhältniss der sex Suffragia zur römischen Ritterschaft. *Zeitschr. f. die Altwiss.* iv (1846). 212–39.
Rudorff, A. F. Römische Rechtsgeschichte. 2 vols. Leipzig, 1857, 1859.
—— Ad legem Aciliam de pecuniis repetundis, etc. *Abhdl. d. Akad. d. Wiss.* 1861. 411–553.
Ruggiero, E. de. [Diz. Ep.] Dizionario epigrafico, i–iii. Rome, 1895–1906.
Ruppel, K. W. Teilnahme der Patrizier an den Tributcomitien. Heidelberg, 1887.

Sall. Hist. = C. Sallusti Crispi, Historiarum reliquiae, ed. B. Maurenbrecher, ii: fragmenta. Leipzig, 1893.
Sall. or Pseud. Sall. Rep. Ord. = Incerti auctoris epistulae duae ad C. Caesarem de republica ordinanda, (in) C. Crispi Sallusti quae extant, i. Ed. C. H. Frotscher. Leipzig, 1825.
Samwer-Bahrfeldt, Röm. Münzw. = Samwer, K. Geschichte des älteren römischen Münzwesens bis circa 200 vor Christi. Ed. M. Bahrfeldt. Vienna, 1883.
Sanders, H. A. The Oxyrhynchus Epitome of Livy. *Trans. of the Am. Philol. Assoc.* xxxvi (1905). 5–31.
Savigny, F. C. von. Vermischte Schriften. 5 vols. Berlin, 1850.

Schiller, H. Geschichte der römischen Kaiserzeit, i. Gotha, 1883.

—— [Röm. Alt.] Römische Kriegsaltertümer, (in) Müller, Hdb. d. kl. Altwiss. iv. 707–44. Staats- und Rechtsaltertümer, ibid. 483–704. Nördlingen, 1887.

Schlossman, S. Tributum, tribuere, tribus. *Archiv f. Lat. Lexicog.* xiv (1905). 25–40.

Schmidt, J. Die Einsetzung der römischen Volkstribunen. *Hermes*, xxi (1886). 460–6.

Schmidt, O. E. Die letzten Kämpfe der römischen Republik. Leipzig, 1884.

—— Der Briefwechsel des M. Tullius Cicero von seinem Prokonsulat in Cilicien bis zu Cäsars Ermordung. Leipzig, 1893.

Schöll, R. [Leg. Duod. Tab. Rel.] Legis duodecim tabularum reliquiae. Leipzig, 1866.

Schott, P. O. Die römische Geschichte im Licht der neuesten Forschungen. *Videnskabs-Selskabets Skriften. Hist. Filos. Klasse*, ii. 1906.

Schrader, O. [Reallex.] Reallexikon der indogermanischen Altertumskunde. Strassburg, 1901.

—— Sprachvergleichung und Urgeschichte, i, ii. 1, 2. 3d ed. Jena, 1906, 1907.

Schulthess, O. Der Process des C. Rabirius vom Jahre 63 v. Chr. Frauenfeld, 1891.

Schulze, C. F. Von den Volksversammlungen der Römer. Gotha, 1815.

Schulze, W. [Gesch. lat. Eigennam.] Zur Geschichte lateinischer Eigennamen. *Abhdl. d. Gesellsch. d. Wiss. zu Gött.* N. F. v. Berlin, 1904.

Schwegler, A. Römische Geschichte. 3 vols. Freiburg, 1870–1884.

Seeley, J. R. Livy i. 3d ed. Oxford, 1881.

Sic. Flacc. = Siculus Flaccus. De condicionibus agrorum, (in) Grom. Vet. 134–65. Ed. Lachmann. Berlin, 1848.

Siebert, W. Ueber Appius Claudius Caecus. Kassel, 1863.

Sitzb. d. bayer. Akad. d. Wiss. = *Sitzungsberichte der königlich bayerische Akademie der Wissenschaften zu München.*

Sitzb. d. Berl. Akad. d. Wiss. = *Sitzungsberichte der königlich preussischen Akademie der Wissenschaften zu Berlin.*

Smith, F. Die römische Timokratie. Berlin, 1906.

Smith, W. and others. [Dict.] A Dictionary of Greek and Roman Antiquities. 3d ed. 2 vols. London, 1890, 1891.

Sol., Solin. = Solinus, C. Julius, Polyhistor; ex editione Claudii Salmasii, accurante M. A. Goezio. Leipzig, 1777.

Soltau, W. [Altröm. Volksversamml.] Ueber Entstehung und Zusammensetzung der altrömischen Volksversammlungen. Berlin, 1880.

—— Die ursprüngliche Bedeutung und Competenz der aediles plebis, (in) Historische Untersuchungen A. Schaefer . . . gewidmet, 98–147. Bonn, 1882.

Soltau, W. Gültigkeit der Plebiscite. *Berliner Studien*, ii (1885). 1–176.
—— Die Echtheit des licinischen Ackergesetz von 367 vor Chr. *Hermes*, xxx (1895). 624–9.
—— Cicerò de Re Publica und die servianische Centurienordnung. *Jahrb. f. Philol.* xli (1895). 410–4.
Spinazolla, V. Augures, (in) Ruggiero, Diz. Ep. i. 778–810.
Staaf, E. De origine gentium patriciarum commentatio academica. Upsala, 1896.
Stella Maranca, F. Il tribunato della plebe dalla lex Hortensia alla lex Cornelia. Lanciano, 1901.
Strachan-Davidson, J. L. The Growth of Plebeian Privilege at Rome. *Eng. Hist. Rev.* i (1886). 209–17.
—— The Decrees of the Roman Plebs. ibid. v (1890). 462–74.
—— Cicero. New York and London, 1894.
—— Appian, Civil Wars, i. Oxford, 1902.
Sunden, J. M. De tribunicia potestate a L. Sulla imminuta quaestiones. Upsala, 1897.
Symmachus, Q. Aurelius, quae supersunt. Ed. Seeck. Berlin, 1883.

Terpstra, D. Quaestiones literariae de populo, de senatu, de rege, de interregibus, antiquissimis rei publicae Romanae temporibus. Rotterdam, 1842.
Thesaurus linguae Latinae, i–iv. Leipzig, 1900–1906.
Tophoff, De lege Valeria Horatia, Publilia, Hortensia. Paderborn, 1852.
Toutain, J. Municipium, (in) Daremberg et Saglio, Dict. iii. 2022–34.

Ullrich, J. [Centuriatcom.] Die Centuriatcomitien. Landshut, 1873.
Usener, H. Italische Volksjustiz. *Rhein. Mus.* N. F. lvi (1901). 1–28.

Vaglieri, D. Concilium, (in) Ruggiero, Diz. Ep. ii. 566–71. Mainly provincial.
Valeton, I. M. J. De modis auspicandi Romanorum. *Mnemos.* N. S. xvii (1889). 275–323, 418–52; xviii. 208–64, 406–56.
—— De iure obnuntiandi comitiis et conciliis. ibid. xix (1891). 75–113, 229–70.
Vaniček, A. [Etym. Wörterb. d. lat. Spr.] Etymologisches Wörterbuch der lateinischen Sprache. Leipzig, 1874.
—— [Griech.-lat. etym. Wörterb.] Griechisch-lateinisches etymologisches Wörterbuch. Leipzig, 1877.
Vassis, Sp. Leges Valeriae de provocatione. *Athena*, xvii (1905). 160–5.
Verhdl. d. sächs. Gesellsch. d. Wiss. = *Berichte über die Verhandlungen der königlich sächsischen Gesellschaft der Wissenschaften zu Leipzig. Philologisch-historische Classe.* Referred to also as *Ber. sächs.* etc.
Victor, C. Julius, Ars rhetorica, (in) Orelli-Baiter, Ciceronis Opera, v. 1. 195–268.

Voigt, M. Die lex Maenia de dote vom Jahre 568 der Stadt. Weimar, 1865.
—— Ueber das römische System der Wege im alten Italien. *Ber. sächs. Gesellsch. d. Wiss.* xxiv (1872). 29–90.
—— Leges regiae. *Abhdl. d. sächs. Gesellsch. d. Wiss.* vii (1879). 555–826.
—— XII Tafeln. 2 vols. Leipzig, 1883.
—— Die lex Fabia de plagiariis. *Ber. sächs. Gesellsch. d. Wiss.* xxxvii (1885). 319–345.
—— Ueber die staatsrechtliche possessio und den ager compascuus. *Abhdl. sächs. Gesellsch. d. Wiss.* x (1888). 221–272.
—— Ueber die lex Cornelia sumptuaria. *Ber. sächs. Gesellsch. d. Wiss.* xlii (1890). 244–79.
—— Römische Rechtsgeschichte. 3 vols. Leipzig and Berlin, 1892–1902.
Volquardsen, C. A. Die drei ältesten römischen Tribus. *Rhein. Mus.* N. F. xxxiii (1878). 557–64.

Wachsmuth, W. Die ältere Geschichte des römischen Staates. Halle, 1819.
Walde, A. Lateinisches etymologisches Wörterbuch. Heidelberg, 1906.
Wallinder. De statu plebeiorum Romanorum ante primam in montem Sacrum secessionem quaestiones. Upsala, 1860.
Waltzing, J. P. Étude historique sur les corporations professionelles chez les Romains. 4 vols. Louvain, 1895–1900.
Warren, M. The Stele Inscription in the Roman Forum. *Am. Journ. of Philol.* xxviii (1907). 249–72.
Weber, M. Die römische Agrargeschichte in ihrer Bedeutung für das Staats- und Privatrecht. Stuttgart, 1891.
Wex, C. Ueber die leges annales der Römer. *Rhein. Mus.* iii (1845). 276–88.
Wiener Studien. Zeitschrift für klassische Philologie. Supplement der Zeitschrift für die österreichischen Gymnasien. Vienna.
Wigger, J. Verteidigung der Nieburschen Ansicht über den Ursprung der römischen Plebs, etc. Warburg, 1885.
Willems, P. [Sén. Rom.] Le sénat de la république Romaine, etc. 2 vols. 2d ed. Louvain, 1885.
—— Droit public Romain. 6th ed. Paris and Louvain, 1888.
Wilmanns, W. Ueber die Gerichtshöfe während des Bestehens der lex Cornelia iudiciaria. *Rhein. Mus.* N. F. xix (1864). 528–41.
Wissowa, G. Religion und Kultus der Römer, (in) Müller, Hdb. d. kl. Altwiss. v. 4. Munich, 1902.
—— Augures, (in) Pauly-Wissowa, Real-Encycl. ii. 2313–44. Auspicium. ibid. 2580–7.

Zeitschrift für die österreichischen Gymnasien. Vienna.

Zeitschr. f. gesch. Rechtswiss. = *Zeitschrift für geschichtliche Rechtswissenschaft.* Berlin.

Zeitschr. d. Savignyst. = *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Römische Abteilung.* Weimar.

Zöller, Latium und Rom. Leipzig, 1878.

Zumpt, C. T. De legibus iudiciisque repetundarum. *Abhdl. d. Akad. d. Wiss. zu Berlin.* 1845. 1–70, 475–515.

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